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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

Docket No. DHS-2006-0030

RIN 1601-AA37

**Minimum Standards for Drivers' Licenses and Identification Cards Acceptable by
Federal Agencies for Official Purposes**

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is establishing minimum standards for State-issued drivers' licenses and identification cards that Federal agencies would accept for official purposes on or after May 11, 2008, in accordance with the REAL ID Act of 2005. This rule establishes standards to meet the minimum requirements of the REAL ID Act of 2005. These standards involve a number of aspects of the process used to issue identification documents, including: information and security features that must be incorporated into each card; application information to establish the identity and immigration status of an applicant before a card can be issued; and physical security standards for facilities where drivers' licenses and applicable identification cards are produced. This final rule also provides a process for States to seek an additional extension of the compliance deadline to May 11, 2011, by demonstrating material compliance with the core requirements of the Act and this rule. Finally, taking into consideration the operational burdens on State Departments of Motor Vehicles, this rule

extends the enrollment time period to allow States determined by DHS to be in compliance with the Act to replace all licenses intended for official purpose with REAL ID-compliant cards by December 1, 2014 for people born after December 1, 1964, and by December 1, 2017 for those born on or before December 1, 1964.

DATES: Effective Date: This rule is effective [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance Dates: Extensions: Effective May 11, 2008, Federal agencies cannot accept drivers' licenses or identification cards for official purposes, as defined herein, from States that have not been determined by DHS to be in compliance with the REAL ID Act unless a State has requested and obtained an extension of the compliance date from DHS. States seeking extensions must submit a request for an extension to DHS no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Effective December 31, 2009, any initial extension will terminate unless a State, no later than October 11, 2009, submits to DHS a request for an additional extension and certification that the State has achieved the benchmarks set forth in Appendix A to part 37. Effective May 11, 2011, drivers' licenses and identification cards will not be accepted from States that are not in full compliance with the provisions of REAL ID.

Enrollment: Effective December 1, 2014, Federal agencies cannot accept drivers' licenses or identification cards for official purposes, as defined herein, from any individual born after December 1, 1964, unless DHS has determined that the issuing State is in compliance with Subparts A through D of this rule and the card presented by the individuals meet the standards of this rule. Effective December 1, 2017, Federal agencies

will not accept any State-issued drivers' licenses and identification cards for official purposes unless such cards have been issued by States that have certified to DHS their compliance with Subparts A through D of this rule.

FOR FURTHER INFORMATION CONTACT: Darrell Williams, REAL ID Program Office, Department of Homeland Security, Washington, DC 20528 (202) 282-9829.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AAMVA—American Association of Motor Vehicle Administrators

ACLU—American Civil Liberties Union

CAC—U.S. Department of Defense Common Access Card

CDLIS—Commercial Drivers License Information System

CHRC—Criminal History Records Check

CRBA—Consular Report of Birth Abroad

DHS—U.S. Department of Homeland Security

DMV—Department of Motor Vehicles

DOS—U.S. Department of State

DOT—U.S. Department of Transportation

EAD—Employment Authorization Document

EDL—Enhanced driver's license and identification card

EVVE—Electronic Verification of Vital Events

FOIA—Freedom of Information Act

IAFIS—Integrated Automated Fingerprint Identification

ICAO—International Civil Aviation Organization

ID—Identification Card

JPEG—Joint Photographic Experts Group

LPR—Lawful Permanent Resident

MRZ—Machine Readable Zone

NAPHSIS—National Association of Public Health Statistics and Information Systems

NASCIO—National Association of State Chief Information Officers

NCSL—National Conference of State Legislatures

NCIC—National Crime Information Center

NGA—National Governors Association

NPRM—Notice of Proposed Rulemaking

PII—Personally Identifiable Information

RFID—Radio Frequency Identification

SAVE—Systematic Alien Verification for Entitlements

SEVIS—Student and Exchange Visitor Information System

SSA—Social Security Administration

SSI—Sensitive Security Information

SSN—Social Security Number

SSOLV—Social Security On-Line Verification

TIF—Tagged Image Format

TSA—Transportation Security Administration

TWIC—Transportation Worker Identification Credential

USCIS—U.S. Citizenship and Immigration Services

WHTI—Western Hemisphere Travel Initiative

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I. BACKGROUND

A. Statutory Authority and Regulatory History

This final rule establishes minimum standards for State-issued drivers' licenses and identification cards that Federal agencies can accept for official purposes on or after

May 11, 2008, as required under the REAL ID Act of 2005. See, Public Law 109-13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note) (the Act).

During the terrorist attacks on the United States on September 11, 2001, all but one of the terrorist hijackers acquired some form of identification document, some by fraud, and used these forms of identification to assist them in boarding commercial flights, renting cars, and other necessary activities leading up to the attacks. See, THE 9/11 COMMISSION REPORT, FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES (July 2004) (9/11 Commission Report), p. 390. The 9/11 Commission recommended implementing more secure sources of identification for use in, among other activities, boarding aircraft and accessing vulnerable facilities. In its report, the Commission stated

Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers' licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.

Id. at 390.

Congress enacted the Act in May 2005, in response to the 9/11 Commission's recommendations.

Under the Act, Federal agencies are prohibited, effective May 11, 2008, from accepting a driver's license or a State-issued personal identification card for an official purpose unless the issuing State is meeting the requirements of the Act. "Official purpose" is defined under § 201 of the Act to include access to Federal facilities,

boarding Federally-regulated commercial aircraft, entry into nuclear power plants, and such other purposes as established by the Secretary of Homeland Security.

Undoubtedly, the most significant impact on the public of this statutory mandate is that, effective May 11, 2008, citizens of States that have not been determined by DHS to be in compliance with the mandatory minimum requirements set forth in the REAL ID Act may not use their State-issued drivers' licenses or identification cards to pass through security at airports. Citizens in this category will likely encounter significant travel delays.

The Act authorizes the Secretary of Homeland Security, in consultation with the States and the Secretary of Transportation, to promulgate regulations to implement the requirements under this Act. Section 205(b) of the Act further authorizes the Secretary of Homeland Security to grant extensions of time to meet the minimum standards of the Act when States provide adequate justification for noncompliance. The Act does not, however, give DHS the authority to waive any of the mandatory minimum standards set forth in the Act. Those mandatory provisions are set forth below.

Section 202(b) of the Act directs that REAL ID-compliant licenses and identification cards must include the following information:

- (1) The person's full legal name, date of birth, and gender;
- (2) The person's driver's license or identification card number;
- (3) A digital photograph of the person;
- (4) The person's address of principal residence;
- (5) The person's signature;

- (6) Physical security features designed to prevent tampering, counterfeiting, or duplication of the drivers' licenses and identification cards for fraudulent purposes; and
- (7) A common machine-readable technology, with defined minimum elements.

Section 202(c) of the Act also mandates certain minimum standards that States must adopt when issuing drivers' licenses and identification cards intended for use for official purposes (referred to as REAL ID-compliant cards). Those standards include, but are not limited to, the following:

- The State shall require, at a minimum, presentation and verification of (1) a photo identity document (except that a non-photo identity document is acceptable if it includes both the applicant's full legal name and date of birth); (2) documentation showing the applicant's date of birth; (3) proof of the person's Social Security Number (SSN) or verification that the applicant is not eligible for a SSN; and (4) documentation showing the applicant's name and address of principal residence. § 202(c).
- The State shall require valid documentary evidence that the applicant is lawfully present in the United States. Such evidence shall include documentary evidence that the applicant: (1) is a citizen or national of the United States; (2) is an alien lawfully admitted for permanent residence or temporary residence in the United States or pending application for same; (3) has conditional permanent resident status in the United States or pending application for such status; (4) has an approved application for asylum in the

United States, a pending application for asylum, or has been admitted to the United States in refugee status; (5) was lawfully admitted to the United States using a valid, unexpired nonimmigrant visa; (6) has a pending or approved application for temporary protected status in the United States; or (7) has approved deferred action status. § 202(c)(2)(B).

- States must establish procedures to verify each document required to be presented by the applicant. The State also shall have entered into a memorandum of understanding (MOU) with DHS to use the Systematic Alien Verification for Entitlements (SAVE system) to verify the lawful status of an applicant, other than a U.S. citizen. § 202(c)(3)(C).
- States also must confirm with the Social Security Administration (SSA) that the SSN presented by an applicant (as required under § 202 (c)(1)(C)) is registered to that person. § 202(d)(5).
- States must ensure the physical security of facilities where drivers' licenses and identification cards are produced; and the security of document materials and papers from which drivers' licenses and identification cards are produced. § 202(d)(7).
- All persons authorized to manufacture or produce cards to appropriate security clearance requirements. § 202(d)(8).
- Physical security features on the drivers' licenses and identification cards designed to prevent tampering, counterfeiting, and duplication of the documents for a fraudulent purpose. § 202(b)(8).

The Act also permits a State otherwise in compliance with the Act to issue drivers' licenses and identification cards that do not conform to the Act's requirements. See § 202(d)(11). Federal agencies, however, cannot accept such drivers' licenses and identification cards for an official purpose and States must ensure that such cards or licenses must state on their faces that a Federal agency may not accept it for an official purpose. See § 202(d)(11)(A). States also must use a unique design or color indicator so that it is readily apparent to Federal agency personnel that the card is not to be accepted for an official purpose. See § 202(d)(11)(B).

The Act requires DHS to determine whether a State is meeting the Act's requirements based upon certifications submitted by each State in a manner prescribed by DHS.

II. DISCUSSION OF FINAL RULE

DHS published an NPRM on March 3, 2007, proposing requirements to meet the minimum standards required under the Act. The proposed requirements included information and security features that must be incorporated into each card; application information to establish the identity and immigration status of an applicant before a card can be issued; and physical security standards for facilities where drivers' licenses and identification cards are produced. For additional information, please see the NPRM at 72 FR 10820.

DHS received over 21,000 comments on the NPRM and supporting regulatory evaluation during the sixty-day public comment period for this rulemaking action.

Responses to those comments are set forth in Section IV of this final rule.

This final rule implements the requirements of the Act, but with significant changes from the NPRM as a result of public comment, as discussed below.

As discussed above, effective May 11, 2008, Federal agencies are prohibited from accepting for official purposes state-issued drivers' licenses or identification cards unless an issuing State certifies, and DHS determines, that it has met the mandatory minimum requirements of § 202 of the REAL ID Act. Several States have implemented – or are working to implement – legislation prohibiting their Departments of Motor Vehicles (DMVs) from complying with the requirements of the Act or any related implementing regulations issued by DHS. DHS wants to make clear that effective May 11, 2008, individuals from States who have not obtained an extension of the compliance date from DHS, or who have not submitted a Compliance Package to DHS under the deadlines provided in this final rule, will not be able to use their State-issued license for federal official purposes, including for identification to board a commercial airplane. Residents of States that do choose to comply, however, through submission of their Compliance Plan or a timely-filed request for an extension, will be able to continue to use their current license to board commercial aircraft (and for other official purposes) through December 1, 2014. Effective December 1, 2014, Federal agencies will refuse to accept non-REAL ID-compliant drivers' licenses from all persons born before December 1, 1964 (i.e. under the age of fifty). Effective December 1, 2017, anyone seeking to use a State-issued driver's license or identification card for official purpose, including boarding of commercial aircraft, must have a REAL ID-compliant card.

A. Extension of Deadlines

Under section 205(b) of the Act, the Secretary of Homeland Security is authorized to grant extensions of the May 11, 2008 compliance date to those States who provide adequate justification for their inability to comply by the statutory deadline. On March 1, 2007, the Secretary of Homeland Security announced, in conjunction with the release of the NPRM, that the Department would grant extensions to all States requesting extensions, not to exceed December 31, 2009. In the NPRM, DHS proposed that States that would not be able to comply by May 11, 2008, should request an extension of the compliance date no later than February 10, 2008, and the proposal encouraged States to submit requests for extension as early as October 1, 2007. Under this final rule, States must file requests for an initial extension no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. That initial extension would expire on December 31, 2009. Pursuant to § 37.55 of this rule, States must submit requests for extensions to the REAL ID Program Office. Contact information is provided in the “For Further Information” section of this rule. Requests for extension must be submitted from the highest level executive official in the State overseeing the DMV to the REAL ID Program Office.

DHS received numerous comments from States arguing that the lack of a centralized verification system would make it impossible for most, if not all, States to comply with the minimum statutory requirements by December 31, 2009. DHS recognizes the difficulty that many States may have in meeting the statutory requirements under the Act, but emphasizes that the Department has a critical responsibility to ensure that identification documents used to board commercial air carriers or access Federal

buildings are secure documents and adequately prevent persons from circumventing Federal security and screening requirements by use of false or fraudulent identification.

In balancing the operational needs of the States against the security responsibilities of DHS and the Federal Government, DHS has decided to allow States to obtain an extension beyond December 31, 2009. DHS, however, will only grant a second extension to States that demonstrate that they have achieved certain milestones towards compliance with the Act and the final rule. States unable to demonstrate this progress will not be able to receive an additional extension. DHS has identified eighteen milestones, captured in the “Material Compliance Checklist,” (Appendix A to part 37 of this final rule), that States must certify they have met in order to obtain an extension of the compliance deadline beyond December 31, 2009. The eighteen milestones are all mandatory requirements under the Act; one of the most important ones, however, is the State’s ability to verify that the applicant is lawfully present in the United States. Any second extension will terminate effective May 11, 2011, at which time, as discussed above, the State must begin issuing fully compliant REAL ID cards.

B. Phased Enrollment Periods

DHS initially proposed that States determined by DHS to be in compliance with the Act and the final rule would have until May 11, 2013 to replace all drivers’ licenses and identification cards with REAL ID-compliant cards. Under the NPRM, licenses intended for Federal official purposes issued by States on or after May 11, 2008 and determined by DHS to be in compliance with the Act and this final rule would be REAL ID-compliant, and the State would have worked to replace existing licenses, through standard renewal or replacement processes no later than May 11, 2013. Until that

phased-in enrollment period concluded on May 11, 2013, Federal agencies would accept from residents of compliant States both REAL ID-compliant licenses dated on or after May 11, 2008 or standard licenses issued before May 11, 2013. The NPRM also proposed the same phase-in period for States requesting initial extensions of the compliance date until December 31, 2009, i.e., States receiving an extension would still have until May 11, 2013 to enroll their current drivers.

During the public comment period, a number of States and State associations noted that States obtaining an initial extension of the compliance date until December 31, 2009, would still be required to enroll their existing driver population (estimated to be approximately 240 million) by May 11, 2013. This would essentially halve the phase-in period and create an untenable burden and increased costs on States who were committed to complying with the REAL ID requirements. Several commenters suggested that DHS consider a risk-based approach that would permit States and DMVs to defer enrollment of a proportion of the population that statistically may present a lower risk of obtaining false or fraudulent identification to, among other potential purposes, circumvent Transportation Security Administration (TSA) passenger screening procedures and requirements or to access Federal buildings with a false identification.

DHS recognizes the significant operational impact on State DMVs if all licenses issued by a State were required to be REAL ID-compliant by May 11, 2008, or May 11, 2013; and believes that an age-based approach is the best way to balance operational concerns against security concerns. DHS has considered the best methodology to target preventive efforts against an individual attempting to fraudulently obtain an identification document to gain access to a Federal facility, nuclear facility, or commercial aircraft. In

the absence of threat reporting about particular individuals, to which the DMVs will not have access, DHS has determined that the most appropriate substitute criteria to apply is age.

DHS has determined that the most logical option to reduce the significant operational burden on States is to allow States to divide their license-bearing population and re-issue REAL ID-compliant licenses through a two-phased enrollment. This approach would reduce the operational burdens on States, which otherwise would have to reissue licenses to the majority of their license-bearing populations within two years for States requiring and obtaining extensions until May 11, 2011. DHS also has determined that a phased enrollment based on age is consistent with the intent of the REAL ID Act by focusing the first phase of enrollment on the population of persons that may have a higher propensity to obtain and use fraudulent identification.

To determine a logical age to use as a cut-off point for a two-phased enrollment, DHS determined, based on comments received and statistical analysis of incident reports obtained from the TSA, that solely for purposes of establishing an age-based enrollment for compliance with the REAL ID Act, the logical point of division would be to allow States to defer enrollment for persons over the age of fifty. The statistical analysis supporting this determination was conducted by DHS utilizing TSA incident reports identifying persons arrested or detained for use of fraudulent identification at TSA screening areas during the period from October 1, 2004 through July 25, 2007. This analysis roughly indicates that persons over the age of fifty were less likely to be involved in TSA-related law enforcement incidents involving false or fraudulent

identification. More specific information on the methodology underlying this assessment is provided in Section IV.C. below.

Accordingly, DHS, under this final rule, has developed a phased enrollment approach for States who have certified compliance with the requirements of the Act and this final rule, and have been determined by DHS to be in compliance with the Act and this rule. Under this final rule, once a State certifies compliance with the REAL ID Act and this final rule, the State may focus enrollment first on issuing REAL ID-compliant cards to individuals born after December 1, 1964 (those who will be less than fifty years of age as of December 1, 2014, the date of full compliance). States may delay the full enrollment of persons born on or before December 1, 1964, for three additional years, until December 1, 2017.

DHS believes that this approach balances the security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the necessary legal and budgetary approval from within their States to comply with the regulations. DHS also notes that States will be able to reduce their overall compliance costs based on phased enrollment approach. The economic analysis is presented in section V. of this rule.

C. Verification and Data Exchange Systems Architecture

The REAL ID Act requires States to verify supporting documents with the issuing agency. Because our population moves freely among the States, each State will need the capability to verify documents from issuing agencies in all other States. Although the Act places this burden on the States, DHS has worked to consider several technical

solutions that would provide States with this capability. DHS has initiated a verification systems design project to define the requirements for the optimal system for REAL ID. DHS is working with the American Association of Motor Vehicle Administrators (AAMVA), the Department of Transportation (DOT), the Social Security Administration, the Department of State (DOS), the National Association of Public Health Statistics and Information Systems (NAPHSIS), and State representatives to define requirements for a “hub” based network and messaging systems to support the requirements of REAL ID. DHS is assessing the extent to which the current AAMVA network, communications, and systems architecture can serve as a platform for deployment of REAL ID data verification and State-to-State data exchanges.

The backbone of this hub would be AAMVAnet, the network system that AAMVA operates to facilitate data verification for State DMVs. DOT is currently funding an ongoing project to upgrade the capability of AAMVAnet by building in such security features as end-to-end data encryption and Federal Information Security Management Act-based security standards. The DOT-funded project will potentially expand AAMVAnet’s capability to provide the capacity to handle the increased transaction volume for the required State-to-State transactions. Finally, the AAMVAnet backbone resides on a private network with no connectivity to the Internet. It has been, and will continue to be, a highly secure transportation layer for all communications between States and agency databases.

With respect to data verification, AAMVAnet already supports verification of both social security numbers (SSNs) and birth certificates. These application systems enable States to query the Social Security On-Line Verification (SSOLV) database

managed by the Social Security Administration (SSA) and the Electronic Verification of Vital Events (EVVE) system owned and operated by NAPHSIS. While 47 States currently verify SSNs through AAMVAnet, verification of birth certificates is limited to those States whose vital events records are available online. In both cases only State DMVs can initiate queries; personal data is verified and not exchanged; and no personal information is created, modified, or stored as a result of the transaction. Working with both SSA and NAPHSIS, DHS is identifying requirements for enhancements to both application systems.

U.S. Citizenship and Immigration Services (USCIS) is working to modify the SAVE system to allow States to facilitate their ability to meet the verification requirements under the § 202(c)(3) of REAL ID Act, a requirement that States routinely utilize the SAVE system to verify the lawful status of REAL ID card applicants. Currently, a majority of States have already entered into Memoranda of Understanding with USCIS to access and use SAVE, as required under section 202(c)(3) of the Act. USCIS is developing a standard user interface to meet all State DMV business process needs for immigration-related transactions and to draft requirements for a common messaging system that takes advantage of the same AAMVAnet standards and infrastructure that support State DMV queries against SSOLV, EVVE, and other Federal and State databases.

DHS also is exploring the alternative of using the Commercial Drivers Licensing Information System (CDLIS) as the baseline platform for supporting the State-to-State data exchange requirements of the REAL ID Act and regulation. CDLIS currently supports queries to every State DMV every time an individual applies for a driver's

license in any State or the District of Columbia. CDLIS already meets the data exchange requirements of REAL ID for those drivers holding commercial drivers' licenses.

Moreover, CDLIS is a secure, State-governed system that stores the minimum amount of personal information possible to facilitate the routing of queries and responses between States. DHS is considering an effort to define system requirements for REAL ID State-to-State data exchanges based upon the CDLIS model or platform. This project would define a systems architecture for REAL ID State-to-State data exchanges that would leverage the ongoing CDLIS modernization project led by the DOT. DHS will work closely with DOT to build upon current and planned systems designs to meet the requirements of REAL ID.

D. Marking of Compliant REAL ID Documents

Section 202(d)(11) of the Act allows States to issue, in addition to REAL ID-compliant licenses, identification cards not intended to be accepted by Federal agencies for official purposes. Under the Act, however, any such card must clearly state on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and States must use a unique design or color indicator to alert Federal agencies and other law enforcement that it may not be accepted for any such purpose. DHS will leave the types of marking and unique coloring to the discretion of the individual States, subject to DHS approval as part of the Compliance Package to ensure that DHS officials, such as TSA screeners, can adequately distinguish between REAL ID-compliant cards and those not intended for official purposes.

Based on an analysis of feedback from several commenters, DHS, however, has determined it would be in the best interest of the nation's security for States to place a

security marking on licenses and identification cards to allow Federal agencies to more readily determine which States are issuing licenses or identification cards that are REAL ID-compliant or have been determined to be “materially compliant”(including verifying that REAL ID applicants are lawfully present in the United States). DHS will work with States concerning marking compliant licenses and identification cards that indicate whether the document was issued in *material compliance* of the Act’s requirements, or in *full compliance* of the Act’s requirements as set forth in Subpart E of this rule.

E. Prohibition on States Issuing REAL ID Cards to Persons Who Hold a Driver’s License in another State

Section 202(d)(6) of the Act requires that States “refuse to issue a driver’s license or identification card to a person holding a driver’s license issued by another State without confirmation that the person is terminating or has terminated the driver’s license.” In the NPRM, DHS maintained that we are not regulating the issuance of drivers’ licenses beyond that required under the REAL ID Act, but encourage the policy of “one driver, one license.” Following comments on the rule, however, DHS believes it is necessary to clarify that the REAL ID Act mandates that a State cannot issue a REAL ID license to a person who is holding a license issued by another State or to an individual who already holds a REAL ID card. (A person can, however, hold a REAL ID card and another non-REAL ID, non-driver’s license identification card). DHS, therefore, revised § 37.33, moving that provision to a separate section (§ 37.29), to clarify and emphasize that a State cannot issue a REAL ID card without verifying that an applicant does not hold another REAL ID card or a driver’s license from another State, or if the applicant

holds another driver's license, that he or she is taking steps to terminate that license. See § 202(d)(6) of the Act.

F. Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended¹, requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to require travelers entering the United States to present a passport, other document, or combination of documents, that are "deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship." This DHS and Department of State (DOS) initiative is referred to as the Western Hemisphere Travel Initiative (WHTI). DHS and DOS have issued several regulations implementing WHTI travel document requirements at air ports of entry, and proposing documents acceptable for cross border travel at land and sea ports-of-entry. For additional information on the WHTI rulemaking actions, please see 71 FR 68411 (Nov. 24, 2006)(final air rule) and 72 FR 35087 (proposed land and sea rule).

As part of WHTI, the Secretary of Homeland Security has the authority to designate alternative documents that denote identity and citizenship that can be used for cross border purposes at land and sea ports-of-entry. In determining which documents should provide a convenient, low-cost alternative for U.S. citizens, particularly those residing in border states, DHS notes that State DMVs are well positioned to provide an enhanced driver's license (EDL) to meet this need. DHS is coordinating efforts to ensure that an EDL, developed to meet the requirements of WHTI, will adopt standards that REAL ID requires, as they are defined through the REAL ID rulemaking process. For an

¹ Pub. L. 108-458, as amended, 118 Stat. 3638 (Dec. 17, 2004).

EDL to be an acceptable WHTI document for land and sea cross-border travel, it can only be issued to U.S. citizens, denote such citizenship on the face of the card, must include technologies that facilitate electronic verification and travel at ports-of-entry. DHS will continue to work closely with interested states to develop drivers' licenses that can meet both REAL ID and WHTI requirements.

The requirements outlined above constitute substantive changes between the March 2007 proposed rule and this final rule. A more robust discussion of this final rule and DHS's responses to comments are set forth below.

III. SECTION-BY-SECTION ANALYSIS OF THE FINAL RULE

Section 37.01 Applicability

DHS added a reference to § 202(d)(11) of the REAL ID Act to make it clear that the provisions of this rule apply to States who intend to issue drivers' licenses or identification cards that can be accepted by Federal agencies for official purposes and that intend to be determined by DHS to be in compliance with section 202 of the REAL ID Act.

Section 37.03 Definitions

DHS added a definition of "full compliance" to clarify the relationships between full compliance with the requirements of Subparts A through D, and "material compliance" with the procedures in Subpart E that allow a State to file for and receive an extension.

DHS refined the definition of "covered employees" in this final rule to clarify that employees refers to DMV employees.

DHS added a definition of “duplicate” for drivers’ licenses and identification cards issued subsequent to the original license or card bearing the same information and expiration date as the original.

DHS has modified the definition of “full legal name” to bring it closer to existing name conventions used by the Social Security Administration, the Department of State, and other issuers of source documents.

DHS has added the definition of “material change” to provide clarity for States as to when an individual may be required to make an in-person visit to a DMV office to obtain an updated REAL ID driver’s license or identification card when certain information changes from the time they obtained their previous REAL ID document. For the purpose of this final rule, a change of address of principal residence does not constitute a material change.

DHS has added a definition of “material compliance” as a basis for establishing the benchmarks that DHS will use to evaluate State progress toward meeting the requirements of this rule. States in material compliance with Subparts A through D of this rule will be granted a second extension until no later than May 10, 2011 to meet all the requirements of this rule.

DHS maintained the same definition of “official purpose” as that proposed in the NPRM and set forth in the REAL ID Act; to mean “accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants.”

DHS also added a definition for “personally identifiable information” as it pertains to these rules and the REAL ID Act.

DHS changed the definition of “principal residence” from the location where a person has his or her true, fixed, and permanent home and intends to return, to the location where a person currently resides even if this location is temporary, in conformance with the residency requirements of the State issuing the driver’s license or identification card, if such requirements exist. DHS made this change in response to comments that the prior definition would unfairly prevent persons such as military personnel or students residing temporarily in a State from obtaining a driver’s license or identification card from that State.

DHS revised the definition of “sexual assault and stalking” to incorporate the meaning of these terms given by State laws.

DHS broadened the scope of the term “State address confidentiality” to allow States to cover not only victims of violence or assault, but also “other categories of persons” that may need to have their addresses kept confidential.

DHS added a comprehensive definition of the term “verify” to clarify the scope of application in the rule. The definition makes it clear that verification includes two interrelated procedures: (1) inspection to see if the document is genuine and has not been altered, and (2) checking to see that the identity data on the document is valid.

Section 37.05 Validity Periods and Deadlines for REAL ID Drivers’ Licenses and Identification Cards.

The proposed language in § 37.05 required that all cards issued, reissued, or renewed after May 11, 2008 had to be REAL ID-compliant by May 11, 2013 in order to be acceptable by Federal agencies for official purposes. As discussed in Section II above and the responses to comments in Section IV below, DHS has determined that the following enrollment schedule will apply under this final rule: (1) effective December 1,

2014, Federal agencies will be prohibited from accepting State-issued drivers' licenses or identification cards for official purpose from individuals born after December 1, 1964, unless the individual presents a REAL ID-compliant card from a State that has certified and that DHS has determined compliance with the REAL ID Act and this final rule; and (2) effective December 1, 2017, Federal agencies will be prohibited from accepting for official purposes from any individual (regardless of age) State-issued drivers' licenses or identification cards that are not REAL ID-compliant.

Section 37.11 Application and Documents the Applicant Must Provide.

DHS proposed, in the March NPRM, that States must maintain photographs of individuals who applied for, but ultimately were denied a REAL ID card by the State, for up to one year. However, DHS also proposed that States must maintain photographs of persons denied REAL ID cards based on suspected fraud for ten years and reflect in the State's records that a driver's license or identification car was not issued by the State because of suspicions of fraud. In response to comments, this final rule was amended to provide a uniform photograph retention provision of five years for persons who are denied a REAL ID card, regardless of the reason that the State denies issuance of a REAL ID card. DHS has also added a provision requiring States to retain the photo for two years after expiration of the card to allow individuals to renew licenses after they have expired.

The NPRM also proposed to require, under § 37.11(b), that States retain with applicant source documents the required signed declaration that the information presented by the applicant is true and accurate. This final rule no longer requires States to retain the required declaration with the applicant's source documents, the retention of which is

mandated under § 202(d)(2) of the Act. Instead, recognizing the operational burdens on the States, DHS is exercising its discretion on this matter to require only that the declaration must be retained by States consistent with applicable State document retention requirements or policies.

Under § 37.11(c), DHS has added a provision that would allow DHS to change the list of documents acceptable to establish identity following publication of a notice in the **Federal Register**.

DHS also has provided States a broader latitude to accept documents other than documents issued by a Federal or State-level Court or government agency to establish a name change. Moreover, where State law or regulation permits, the State may record a name other than that contained in the identity document on the face of the license or card as long as the State maintains copies of the documentation presented pursuant to § 37.31, and maintains a record of both the recorded name and the name on the source documents in a manner to be determined by the State.

The NPRM proposed, under § 37.11(e), that an applicant for a REAL ID card must provide documentation establishing a Social Security Number (SSN) or the applicant's ineligibility for an SSN. This final rule amends that proposed requirement to allow an applicant, if a Social Security Administration account card is not available, to present any of the following documents bearing the applicant's SSN: (i) a W-2 form, (ii) a SSA-1099 form, (iii) a non-SSA-1099 form, or (iv) a pay stub bearing the applicant's name and SSN. A State, however, must verify the SSN pursuant to § 37.13(b)(2) of this final rule.

DHS has amended proposed § 37.11(f) to give States more discretion in the acceptance of documents required to demonstrate the applicant's principal address by removing specific requirements that documents used to demonstrate address of principal residence be issued "monthly" and "annually."

In response to comments regarding demonstrating the applicant's lawful status in the United States, DHS has amended §37.11(g) with regard to which identity documents may serve as satisfactory evidence of the applicant's lawful status. While all identity documents listed in § 37.11(c) must be verified by the State in the manner prescribed in § 37.13, State verification of some of the identity documents also provides satisfactory evidence of lawful status. Therefore, if the applicant presents one of the documents listed under § 37.11 (c)(1)(i)-(viii)(except for (v)), the issuing State's verification of the applicant's identity in the manner prescribed in § 37.13 will also provide satisfactory evidence of lawful status. State verification of the remaining identity documents listed in § 37.11(c), however, does not provide satisfactory evidence of lawful status and the applicant must provide additional documentation of lawful status as determined by USCIS.

In response to comments on the exceptions process proposed in § 37.11(h), DHS has amended this final rule to allow U.S. citizens to utilize the process to prove lawful status. In response to comments that it was unrealistic and too costly to require States to provide quarterly reports analyzing the use of their exceptions process, this proposed requirement has been replaced with a requirement that States must conduct a review of the DMV's use of the exceptions process and submit the report to DHS as part of their

certification package per § 37.55. Section 37.11(h) has also reduced the information required to be maintained by the State when the exceptions process is used.

Section 37.13 Document Verification Requirements.

Based on numerous comments and ongoing State DMV programs, the rule now includes the provision that the State must make reasonable efforts to ensure that the person has not been issued identification documents in multiple or different names. Identified by several responders as the top priority for reducing the number of fraudulent licenses issued, this requirement has been reformulated and moved from § 37.11 to 37.13.

In response to concerns that a number of the verification systems contained in the proposal would not be operational by the verification deadlines, the final rule gives States more flexibility in verifying documents and identity data.

DHS added language that provides that nothing in this section precludes a DMV from issuing an interim license or a license under § 202(d)(11) of the Act to permit an individual to resolve any non-match issue, but clarifies that such cards cannot be accepted for official purposes.

Section 37.15 Physical Security Features for the Driver's License or Identification Card.

DHS has deleted the proposed card design standards in response to comments which stated that the standards were an undue burden on the States. DHS has added language that States must conduct a review of their card design and submit a report to DHS as part of its certification package that indicates the ability of the designs to resist compromise and document fraud attempts.

Section 37.17 Requirements for the surface of the driver's license or identification card.

In response to comments that some States allow a name other than the full legal name on the identity document to be on the surface of the license, this section has been amended to require full legal name as demonstrated on the applicant's identity document, but an individual may establish his or her name with other documentation where State law or regulation permits, as long as the State maintains copies of the documentation presented pursuant to § 37.31 and maintains a record of both the recorded name and the full legal name on the identity document in a manner to be determined by the State.

Under § 37.17(d), the unique license or card identification number must only be unique to each license or card holder within the State and not unique across all the States and other covered jurisdictions.

With regard to full facial digital photographs pursuant to § 37.17(e), DHS has clarified the discussion to bring it into closer compliance with DHS, Federal and national standards. Language was added that allows photographs to be in black and white or color.

To provide States with greater flexibility in protecting confidential addresses, § 37.17(f) contains new language that allows the display of an alternative address on the license or card, if a State permits this, and acceptance of an administrative order issued by a State or Federal court to show that an individual's address is entitled to be suppressed. States may also use an address convention used by the U.S. Postal Service where a street number and street name have not been assigned.

Further, § 37.17(g) now requires that States establish an alternative procedure for individuals unable to sign their names. The requirement to use the Roman alphabet has been replaced with use of the Latin alphabet which is more common.

In response to several comments from States and AAMVA that REAL ID-compliant documents should be marked or "branded" as REAL ID-compliant, DHS has added 37.17(n) which requires that REAL ID-compliant licenses and identification cards bear a DHS-approved security marking in accordance with the level of compliance with the Act.

Section 37.19 Machine readable technology on the driver's license or identification card.

This section contains technical conforming changes to reflect the changes made in § 37.11(c)(2) allowing a name other than the full legal name to appear on the license or card if a State law permits. State or territory of issuance has been added to the MRZ data fields to accommodate instances where a State may not have a residency requirement or may allow use of an out-of-State address to receive a license.

Section 37.21 Temporary or Limited-Term Drivers' Licenses and Identification Cards.

In response to comments that the term “temporary” may cause confusion under current terminology practices with some DMVs, this section adds new terminology and now refers to such licenses/cards as “limited-term or temporary.” DHS also added language that provides that the verification of lawful status for such licenses/cards may be through SAVE, or “another method approved by DHS.”

Section 37.23 Reissued REAL ID Drivers’ Licenses and Identification Cards.

In response to comments, § 37.23 now provides that States may conduct a non-in-person (i.e., remote) reissuance of a driver’s license or card if State procedures permit the reissuance to be conducted remotely, except that a State may not remotely reissue a license or card where there has been any material change in information since prior issuance.

Section 37.25 Renewal of REAL ID Drivers’ Licenses and Identification Cards.

Section 37.25(a)(2) adds language that requires the States to reverify SSN information to ensure that the applicant’s information is still valid. DHS has also added explicit language requiring that the State must verify electronically information that it was not able to verify at a previous issuance or renewal, if the systems or processes exist to do so.

Section 37.27 Drivers’ Licenses and Identification Cards Issued During the Age-Based Enrollment Period.

This section has been added to affirm the acceptability of drivers’ licenses and identification cards issued, reissued, or renewed prior to the end of the age-based enrollment period. For example, if an individual is 60 years of age and their license naturally expires in 2009, the State may issue that individual a license under that State’s

current practices, and that license will be accepted for official purposes until 2017, after which time that individual must present a license that complies with this rule for that card to be accepted for official purposes. As of December 1, 2014, individuals born after December 1, 1964 (that is, under fifty years old on that date) must present a REAL ID card when they present a State-issued driver's license or identification for official purposes. As of December 1, 2017, all individuals presenting a State-issued driver's license or identification card for official purposes must present a REAL ID card. The new section reemphasizes that an individual's driver's license will continue to be accepted for official purposes until the expiration of the individual's applicable enrollment period.

Section 37.29 Prohibition against holding more than one REAL ID card or more than one driver's license.

In response to numerous comments to clarify the "one driver one license" concept in the REAL ID rules, DHS has created a stand-alone section, § 37.29, that specifically states that an individual may hold only one REAL ID card, whether it is a REAL ID identification card or a REAL ID driver's license. In addition, prior to issuing a REAL ID driver's license, a State that is complying with REAL ID must check with all other States to determine if the applicant currently holds a driver's license or REAL ID identification card in another State, and if so, the receiving State must take measures to confirm that the person has terminated or is terminating the driver's license or REAL ID identification card issued by the prior State pursuant to State law, regulation or procedure.

Section 37.31 Source document retention

DHS has added language to § 37.31 to reiterate the requirement that States must protect any personally identifiable information collected pursuant to the REAL ID Act as described in the Security Plan (§ 37.41).

In response to comments, DHS deleted the following requirements from this section:

- that States must replace black and white imagers with color imagers by December 31, 2011;
- that States using digital imaging to retain source documents must use the AAMVA Digital Exchange Program or a standard that has interoperability with the AAMVA standard;
- that all images must be linked to the applicant through the applicant's unique identifier assigned by the DMV; the amended requirement now states that all images must be retrievable by the DMV if properly requested by law enforcement.

DHS has also added a provision that allows States to record information from birth certificates in lieu of retaining an image or copy if State law permits and if requested by the applicant. This will protect medical and other personal information not relevant to REAL ID.

Section 37.33 DMV Databases

DHS changed the title of this section from "Database connectivity with other States" to "DMV Databases." This section has also been amended to require that the DMV database allow capture of the full legal name and any other name recorded under § 37.11(c)(2) without truncation.

Section 37.41 Security Plan.

DHS amended this section to clarify that each State submit a single security plan to address DMV facilities involved in the enrollment, issuance, manufacturing and production of drivers' licenses and identification cards, rather than all State DMV driver's license/identification facilities as stated in the NPRM. This change is in response to comments that it does not enhance overall security to require every DMV office (which could be interpreted to include administrative offices) to submit a security plan and individual risk assessments.

Furthermore, in response to comments asking for clarification, § 37.41(b)(iii) now provides that the release and use of personal information must, at a minimum, be consistent with the Driver's Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*

This section of the final rule now indicates that the fraudulent document training requirement would be satisfied by a fraudulent document training program approved by AAMVA. DHS has also deleted the requirements that the security plan contain procedures to revoke and confiscate drivers' licenses or identification cards fraudulently issued in another State, in response to comments that States have no authority to carry out such a requirement.

A new section has been added to § 37.41 to state that the Security Plans contain Sensitive Security Information and must be handled and protected in accordance with 49 CFR Part 1520.

Section 37.43 Physical security of DMV production facilities

This section is unchanged.

Section 37.45 Background Checks for Covered Employees

Section 37.45(d) has been amended to recognize background checks that are similar to those required under § 37.45 and that were conducted on or after May 11, 2006, and that the DMV does not have to check references from prior employers for individuals that have been working with the DMV for at least two consecutive years prior to the Act taking effect. (The Act becomes effective on May 11, 2008). Therefore DMVs would not have to seek references from prior employers of employees who have been with the DMV consecutively from May 11, 2006 to May 11, 2008. The final rule clarifies that the waiver provision in § 37.45(b)(1)(v) allows a waiver of requirements for the determination of arrest status and includes circumstances where the individual has been arrested, but no final disposition on the matter has been reached.

In response to comments, DHS deleted the requirement that States must conduct a financial history check as part of the background check of covered employees.

Section 37.45 now requires that the State confirm the employment eligibility of the covered employee, rather than lawful status through SAVE, and recommends that the State participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

Section 37.51 Compliance – General Requirements

DHS has modified this section in response to many comments. DHS recognizes that States will be unable to meet the all the requirements of this rule beginning on January 1, 2010, the day after the termination of the extension period proposed by DHS in the NPRM. For example, requirements for State verification of source documents depend upon the deployment of electronic systems that have not yet been developed. Therefore, DHS proposes that States meeting key benchmarks for progress toward

compliance with the REAL ID Act be granted an additional extension until no later than May 10, 2011 to meet all the requirements of Subparts A through D. States seeking a second extension would submit a Material Compliance Checklist to DHS no later than October 11, 2009, documenting their progress in meeting the benchmark requirements. States meeting these benchmarks would also be able to issue drivers' licenses and identification cards bearing security markings indicating that the license was issued in conformity with REAL ID standards.

Section 37.55 State Certification Documentation

The title of the section was amended to reflect the changes to the certification process discussed above. The required contents of the State certification have been amended in the final rule to delete the requirement for a copy of all statutes, regulations, and administrative procedures and practices related to the State's implementation program. DHS has amended the requirement that a State's governor certify compliance to read that a State's highest level official with oversight responsibility over the DMVs certify compliance. In addition, the frequency of certification reporting has been modified to be similar to the three-year intervals required by several Department of Transportation programs. Thus, in accordance, §37.57 "Annual State Certifications" has been removed.

Section 37.59 DHS Reviews of State Compliance

DHS has rephrased the information requirement in the section to require any reasonable information pertinent to determining compliance with this part as requested by DHS. Also, DHS must now provide written notice to the State in advance of an inspection visit. The final rule provides that, in the event of a DHS preliminary

determination that the State has not submitted a complete certification or that the State does not meet one or more of the minimum standards for compliance under this part, DHS will inform the State of the preliminary determination within forty-five days. Finally, this section now includes DHS procedures for reviewing a Material Compliance Checklist as part of the procedure for granting States an additional extension until no later than May 10, 2011.

Section 37.61 Results of compliance determination.

The final rule now states that DHS will determine that a State is not in compliance when it fails to submit the certification as prescribed or to request an extension as prescribed in the subpart.

Section 37.63 Extension of Deadline

The NPRM was not clear on the timing of submissions for requests for extension. Although proposed regulatory text stated that requests for extension must be submitted no later than October 1, 2007; the preamble requested submission of compliance plans and strongly encouraged “States to communicate their intent to certify compliance or request an extension by October 1, 2007.” We clarify the deadline for submission of requests for extension in the final rule, providing that requests for extension must be submitted to DHS “no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]” DHS will notify a State of its acceptance of the extension within forty-five days of receipt.

This section now includes the procedure for requesting an additional extension until no later than May 10, 2011. States seeking an additional extension shall submit a Material Compliance Checklist to DHS no later than October 11, 2009, documenting the

State's progress in meeting certain benchmarks. States meeting the benchmarks included in this checklist will be granted a second extension until no later than May 10, 2011.

Section 37.65 Effect of Failure to Comply with this Part

DHS amended this section to provide that REAL ID drivers' licenses and identification cards issued by the State during the term of any extension will continue to be acceptable for official purposes until the card expires.

Section 37.67 Non-REAL ID drivers' licenses and identification cards

This section was renumbered to § 37.71, consistent with the structure of the Part. The section was also renamed to "Drivers' licenses and identification cards issued under § 202(d)(11) of the REAL ID Act" to further clarify that DHS interprets this section of the Act to apply only to States that certify and DHS determines are compliant with the REAL ID Act, as defined by these regulations, and that choose to also issue drivers' licenses and identification cards under the Act that are otherwise not acceptable by Federal agencies for official purposes.

III. Discussion of Comments

During the sixty-day comment period, DHS received over 21,000 comments on the NPRM. DHS received numerous requests to extend the comment period past the sixty days provided in the NPRM. DHS has carefully considered the comments and determined not to extend the comment period for the NPRM. As discussed above, under the REAL ID Act, Federal agencies will be prohibited from accepting drivers' licenses or other State-issued identification cards from States that are not in compliance with the requirements of the Act by May 11, 2008, less than one year away. Given the complexity of the Act's requirements and these implementing regulations, extending the comment

period beyond sixty days would serve only to delay issuance of this final rule and deprive States of the information necessary for their DMVs to begin preparations and adjust their operations consistent with the requirements of this final rule and the Act. Further, in addition to the 60-day comment period, DHS provided several opportunities for additional public participation through such events as the May 1, 2007 public meeting in Davis, California (with participation also available via webcast); and meetings with stakeholders. We determined that the 60-day comment period and additional DHS outreach during the comment period provided adequate time for the public to consider and provide meaningful comment on the NPRM.

We also received several comments that were filed well past May 8, 2007, the close of the comment period. As discussed above, given the upcoming May 11, 2008, compliance deadline and the adequacy of the sixty-day comment period and public outreach, DHS has not accepted or considered comments that were filed after the May 8, 2007 close of the comment period. Because DHS did not extend the comment period, allowing some commenters to file late – or to provide late filed supplements to their comments – would disadvantage those commenters who did not file late and would also have preferred additional time to file comments or amend the comments that were filed within the deadline. Comments that were timely filed, but not processed immediately by DHS due to technical errors by the submitter or DHS, are not considered to have been filed late and were considered in the development of this final rule.

A. General Comments on the Proposed Regulation

1. General Comments in Support of the Proposed Regulation

Comments: Several commenters expressed general support for the proposed rule. Commenters wrote that the REAL ID program will provide a measurable and positive impact on a wide range of security matters, and that the cost estimates, methods of implementation, and the projected time frames were reasonable. One commenter wrote that REAL ID correctly specified a set of performance standards rather than listing static prescriptive standards, and that enhanced document security is essential to combat terrorists, can help improve transportation safety, and can combat identity theft or other criminal acts.

Response: DHS agrees with these commenters, and believes that States that fully implement these rules will improve national security by improving the security and reliability of a key document carried by many Americans. Both the REAL ID Act and the REAL ID regulations focus on improving the reliability of State-issued drivers' licenses and identification cards and decreasing the likelihood that an individual can fraudulently obtain an identity document or alter a legitimate identity document to create a false identity. The availability of better and more reliable security documents means that government and law enforcement officials have a greater opportunity to prevent terrorists and other unauthorized persons from gaining access to commercial airplanes and Federal facilities.

2. General Comments in Opposition to the Proposed Regulation

Comment: Many commenters expressed general opposition to the REAL ID program. General comments included the following: DHS misinterpreted the REAL ID Act, the proposed rule is incomplete and problematic, adequate studies have not been conducted to determine that the program will work, the rule's requirements will lead to

degradation in the level of State DMV customer service, the rule would harm citizens' privacy, and the rule requires additional Federal funding. Many commenters wrote that the rule fails to provide appropriate security, utility, or privacy and one commenter said the rule "is inadequate to meet the intent of the REAL ID Act and the needs of the states and citizens of the U.S." Another commenter wrote that DHS "could have done a better job of creating a regulatory framework that does not increase the risk of identity theft nor enable widespread governmental and commercial tracking of U.S. residents." Several commenters requested that DHS provide a revised NPRM reflecting comments and that DHS accept at least a second round of comments before issuing a final rule. Other commenters asked that public advocacy groups and other stakeholders be consulted to ensure the final rule properly considers citizen rights and interests. Several commenters, including States, wrote that a secure identity credential could increase fraud, identity theft, and other forms of misuse, including the ability to access confidential information, and that many security leaks would occur. Two commenters said the Federal government has an existing program, the passport program, that does everything the REAL ID is supposed to accomplish, and that it makes sense to expand the passport program rather than revamping State driver's license requirements. Other commenters wrote that an improved system of Social Security number verification is a more efficient, less intrusive system for work status verification and driver's license eligibility.

Response: DHS appreciates the many comments received; however, DHS respectfully disagrees with the comments generally opposing the REAL ID program. DHS believes that both DMVs and the American public will welcome having a more secure and reliable form of identification, and that DMVs will take the necessary steps to

ensure that their customer service efforts are not degraded as a result of the regulations. DHS strongly disagrees with the proposition that the rules will lead to an increase in identity theft, harm privacy, or enable the government to track individuals in their daily lives. To the contrary, the rules create an environment where it is far less likely that an individual can fraudulently obtain a State-issued identity document using another person's identity and identity documents and minimizes the possibility that one individual can obtain identification documents in multiple names and identities. The privacy interests of driver's license and identification card applicants are strengthened, rather than weakened, since this rule requires all States to protect the personally identifiable information that DMVs collect from applicants. Establishing minimum standards for States to issue more secure licenses does not confer any ability on the government to monitor or track anyone, although it does improve the ability of the government and private sector parties to rely on the identity document an individual presents.

DHS does not believe that additional rounds of comments on the requirements proposed in the NPRM are necessary before issuing this rule. Some 21,000 comments were filed in the docket covering the full range of issues. In addition, DHS hosted a town hall meeting in California to hear directly from the public and reconstituted the groups that participated in the 2005 Department of Transportation-led negotiated rulemaking committee in order to gather input and comments directly from those groups.

DHS does not agree that a passport issued by the Department of State fulfills the same function as a State-issued driver's license. Individuals who have no intention of leaving the United States do not need to obtain a passport in order to enter another

country or reenter the United States. Any of these same individuals who desire to drive would need to obtain a driver's license.

DHS also disagrees with the comment that a social security number (SSN) is an adequate substitute for the statutory requirement that an individual have lawful status in the United States. Mere possession of a SSN cannot replace the statutory requirement that States verify an individual's lawful status in the United States. There are individuals who are no longer lawfully present in the United States who have SSNs.

3. Cost Considerations

Comment: Numerous commenters questioned the anticipated costs of the REAL ID requirements. Specifically, commenters wrote that the costs of the REAL ID program would be "huge," "exorbitant," "significant," or "excessive." Some States wrote that estimated costs for implementing REAL ID were equal to or substantially exceeded their current operating budgets for motor vehicle licensing. One State estimated its costs for verification and re-verification will be over \$100 million in the first year; another State estimated its costs would be \$19.5 million for initial expenses and \$9 million a year for ongoing expenses. Another commenter suggested that the burden would be particularly heavy on small States, which would be overwhelmed by the volume of queries they would receive each day from States with large populations and which would not have funds to improve their systems to handle the query volume. Commenters identified several features of REAL ID implementation that they believed would be the most costly, including verification requirements; the requirements for issuing driver's license and identification card renewals; background checks for State personnel issuing cards; the

need to upgrade computer systems; hiring additional staff; and renegotiation of existing contracts.

Response: DHS has examined both the budgetary impacts and economic impacts of the proposed rule and understands the significance of these costs for States. DHS has also reviewed various options that would reduce the disproportionate burden upon small states but have not found a feasible alternative that would provide the same benefits but at a lower cost.

DHS has also reviewed many of the high-cost options of the proposed rule and has significantly reduced both the infrastructure costs and the costs of reenrollment for States. As stated in other parts of this document, DHS agrees with an age-based approach and concludes that there is a higher risk of individuals under age fifty obtaining fraudulent identification than there is for those over this age limit.

Comment: Commenters wrote that DHS had overestimated the benefits of REAL ID and that the potential benefits did not justify the high cost of implementation. One commenter stated that cost estimates are low given that DHS has “no clear idea of how to implement the REAL ID Act’s dictates and has made some unrealistic calculations.”

Response: DHS understands that the benefits of the proposed rule on REAL ID are difficult to quantify and that there are some imperfections in the methodology. Commenters stated that DHS has overestimated the benefits when in fact it developed a “break-even analysis.” DHS estimated that if the requirements of the proposed rule lowered by 0.061% per year the annual probability of a terrorist attack that caused both

immediate and longer run impacts than the quantified benefits of the REAL ID regulation would be positive.

This “break-even” analysis was based on the rule having an impact on the annual probability of the U.S. experiencing 9/11 type attacks in the ten years following the issuance of the rule. DHS believes that the probability and consequences of a successful terrorist attack cannot be determined for the purposes of this analysis. However, it was not necessary to assume that there was (or is) a probability of being attacked in any particular year. Instead, the analysis examined the reduction in the probability of an attack so that the expected cost of REAL ID equaled the expected value of the benefits. Since it is extremely difficult to predict the probability and consequences of a hypothetical terrorist attack, DHS asked what impact would the proposed and final rule have to have on the annual probability of experiencing a 9/11 type of attack in order for the final rule to have positive quantified net benefits. The analysis does not assume that the United States will necessarily experience this type of attack, but rather is attempting to provide the best available information to the public on the impacts of this rule.

Comment: Many commenters wrote that the cost of REAL ID would be borne initially by the States, and then passed on to those States’ citizens in the form of higher fees for drivers’ licenses, higher taxes, or reduced services. Commenters wrote that higher fees would be paid by persons who need drivers’ licenses but who do not fly, enter Federal buildings, or go into nuclear facilities. Another commenter wrote that citizens would incur large costs to acquire the source documents needed to obtain REAL ID cards. One commenter wrote that the costs of REAL ID would drain resources from other vital public services. One commenter wrote lost income would be borne by

commercial drivers and motor carriers domiciled in non-compliant States, and that the costs to commercial drivers to obtain new REAL ID commercial drivers licenses may result in reduced trucking services to Federal facilities. One commenter wrote that the DHS cost estimate of \$7.88 billion over ten years would amount to a cost of \$96.25 per REAL ID holder.

Response: DHS acknowledges the concerns of the individuals who commented that this rule will impose significant costs and believes that a large portion of the costs will be passed on from the States to the States' REAL ID applicants in the form of higher fees for drivers' licenses. But each citizen in the United States, whether he or she has a driver's license or not will be receiving security benefits as a result of this rulemaking. For example, the 9/11 Commission believes that acceptable forms of identification will help ensure that people are properly identified. The Commission's report, which informed the basis for the REAL ID Act of 2005 said that: "At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."

DHS agrees that some applicants might incur added costs to acquire the source documents needed to obtain REAL ID cards but, overall, DHS has attempted to minimize the potential added costs while remaining true to the intent of the Act. People are being provided ample time to acquire any source documents that they might not have so the potential added costs will be lessened should they take advantage of this flexibility. Consequently, the added costs are expected to be small.

With regards to commercial drivers and motor carriers domiciled in non-compliant States, the commenter did not provide any useful cost data that could be included in the regulatory analysis. This was probably due to the fact that it is impossible to estimate at this time how many states would choose to not participate.

Comment: Several States wrote that the costs of REAL ID would divert money from other homeland security projects whether or not the States diverted a portion of the Homeland Security Grant Program funding, as DHS would allow them to do. States that raised the possibility of diverting twenty percent of their Homeland Security Grant funds wrote that a diversion would be impossible immediately as funds were already committed to other uses. One commenter called the use of DHS grants for REAL ID “at best, window dressing,” and another commenter called it “an empty hole.” An additional commenter identified training and equipment for rescue and first responder personnel as areas likely to suffer reduced funding. One commenter wrote that if REAL ID security measures ultimately have no effect, those spent dollars would have been spent more effectively in maintaining and strengthening proven security measures.

Response: DHS believes that some commenters may have misunderstood DHS’s announcement about the use of State Homeland Security Grant Program (SHSGP) funds for REAL ID purposes. DHS did not suggest that SHSGP funds would replace appropriated monies from Congress to help the States implement the rules and comply with the REAL ID Act. DHS and the Administration are continuing to work with Congress on the availability of additional funding to the States for these purposes.

All homeland security funding decisions require trade-offs among various competing priorities given the available funding. The 9/11 Commission Report noted

that fraudulently-obtained identification is equivalent to a weapon in the hands of a terrorist.

4. Unfunded Mandate Reform Act

Comment: Numerous commenters wrote that REAL ID is an unfunded mandate. The American Association of Motor Vehicle Administrators (AAMVA) wrote that past and proposed Federal budget submissions had fallen far short of securing necessary funding for both the Federal government and the States to implement REAL ID. More than twenty-seven States called for Federal funding of the REAL ID program. Two States suggested that Federal funding for REAL ID not be in the form of grants for which a State would have to submit applications, but rather be either a block grant or set-aside match for State funds. AAMVA wrote that because eighty percent of a SHSGP funding must be passed along to local governments, in fact a much smaller percentage of available DHS funding will be available to each State for REAL ID implementation.

Response: As discussed elsewhere in this preamble, DHS is adopting a more flexible approach for States to implement the requirements of REAL ID, including a second extension period and age-based enrollment. This approach will permit States to spread out implementation costs over a greater period of time. Congress has appropriated \$40,000,000 in grant funding to the States. These grants will be made available to the States through both categorical and competitive grants. In addition, States may utilize up to 20% of their SHSGP funding. This combination of funding, flexibility and phasing provides the relief that States and other commenters are seeking.

5. Privacy Concerns

Comments: Several States and many other commenters expressed concerns about threats to the privacy of State residents who apply for REAL ID cards once the requirements are implemented. Commenters also expressed concern for the privacy of DMV employees who would be subject to background screening. Some commenters wrote that any privacy requirements must adhere to those of the Driver Privacy Protection Act and applicable State laws. Other commenters urged DHS to encourage States to meet agreed-upon privacy and security requirements. Another commenter asked that privacy and acceptable use policies address State DMV information systems, equipment, employees, and contractors. One commenter wrote that the regulations omit crucial privacy and security protections to the point that the proposed rule conflicts with Federal privacy and security principles. Several commenters were concerned about privacy protection for immigrants, ethnic minorities, and others who might be discriminated against based on use of the REAL ID.

Response: DHS understands that commenters have many concerns that implementation of the REAL ID Act may impact the privacy of driver's license and identification card holders and their personally identifiable information. DHS recognizes, however, the importance of privacy protection and has sought to address privacy in a comprehensive manner. First, the final rule requires a minimum of information to be collected by the States to verify identity for issuance of a license or identification card and a minimum of information to be printed on the card and in the machine readable zone.

Second, the final rule requires the States to file, as part of the certification process, a security plan that explains how the State will protect the personally identifiable

information collected, stored, and maintained in DMV records or information systems including a privacy policy.

In addition to this rulemaking, DHS intends to issue a set of Privacy and Security Best Practices that are built on the Fair Information Principles and Federal Information Security Management Act (FISMA) standards to help guide the States in protecting the information collected, stored, and maintained pursuant to the REAL ID Act.

DHS plans to include the following elements in its Privacy and Security Best Practices: issuing a clear and understandable privacy policy to each card holder; providing individual access and correction rights for card holders; specifying the purpose for collecting personally identifiable information in the privacy policy and limitation of the use to those purposes; limiting the information collected for those purposes; limiting disclosure of the information except to a governmental agency engaged in the performance of official responsibilities pertaining to law enforcement, the verification of personal identity, or highway and motor vehicle safety, or a third party as authorized under the Driver's Privacy Protection Act; requiring data quality standards and security safeguards to protect against loss or unauthorized access, destruction, misuse, modification, or disclosure; performing a Privacy Impact Assessment (PIA) to identify and analyze how personally identifiable information related to implementation of the REAL ID Act is collected, used, maintained, and protected; and establishing accountability for compliance with the State's privacy and security policies to ensure that these best practices are fully implemented.

Finally, DHS recognizes that States will also be guided by their own privacy laws, which may provide greater protections and are not preempted by the REAL ID Act.

6. Concerns with the REAL ID Act Itself

Comments: Many commenters wrote that the REAL ID Act has deficiencies that the regulatory process cannot cure. One State asked DHS to work with States to identify problematic statutory components and to seek Congressional amendments to facilitate a “rational and funded approach for implementation.” Some commenters wrote that the rule sets no clear minimum standards for States to follow. A commenter wrote that there were no hearings or Senate floor debate on the REAL ID Act; another commenter wrote that DHS held only one town hall meeting before the comment period ended. One commenter asserted that the development process did not recognize its tribal entitlement to meaningful consultation regarding the REAL ID regulations.

Response: DHS was charged to issue regulations to implement the law that Congress enacted. DHS held extensive consultations with the States during the development of the NPRM and during the public comment period, and the Town Hall meeting held in California during the comment period was published in the Federal Register and available via the web to a national audience. Over 21,000 comments were filed in the docket. While additional individuals may have preferred to express their comments orally at town hall meetings, DHS believes that the scope and breadth of the comments filed adequately informed DHS on the issues of concern to the commenters. DHS does not believe that the tribal consultation obligations required by Executive Order 13175 were triggered in this rulemaking, as this final rule will not have a substantial direct effect on one or more Indian tribes and will not impose substantial direct compliance costs on Indian tribal governments. Further, tribal governments will not be substantially affected as tribal members are licensed through State agencies.

7. DHS Acting Outside the Scope of Its Authority

Comment: Several commenters wrote that DHS is acting outside the scope of its authority, and cited several examples, including requiring States to conduct various document verifications, requiring States to implement motor vehicle facility security plans, and requiring States to revoke licenses collected by other States. Two States commented that requiring background checks for employees other than those engaged in manufacturing REAL ID cards was outside the scope of authority and interferes with employee collectively bargained rights. Several commenters wrote that the REAL ID Act constitutes a delegation of licensing authority to DHS. Another commenter wrote that Congress only intended to exclude illegal aliens from eligibility to obtain a REAL ID.

Response: The REAL ID Act provides the Secretary of Homeland Security with authority to issue regulations necessary to implement the requirements of the Act. DHS understands that there is a balance between Executive discretion in interpreting the REAL ID Act through regulation, while also respecting the State's autonomy to govern an inherently State function – the driver's license issuance process. DHS has attempted to preserve State autonomy wherever possible, while remaining consistent with the Act, and believes these regulations represent a logical interpretation of the Act and Congressional intent.

8. Constitutional Concerns

Comment: Several commenters wrote that requiring a REAL ID for access to Federal courts may raise Constitutional issues for litigants, jurors, attorneys, witnesses, media, and the public. Another commenter wrote that requiring REAL ID for accessing

Federal ports will have consequences for intrastate licensees attempting to conduct business.

Response: DHS does not believe that the REAL ID Act or the implementing regulations will impede the public's Constitutional rights. Once REAL ID is in effect, an individual presenting a driver's license to access a Federal courthouse must use a REAL ID driver's license to do so. However, that individual may present other documents, or may not be required to present identification at all, depending on the courthouse's pre-existing identification policies.

Comment: Several commenters wrote that the REAL ID rules would impermissibly commandeer and coerce State governments in service of a Federal objective and would prohibit Congress from exercising its Commerce Clause powers. One commenter wrote that courts have long recognized that licensing of drivers is a traditional State police, health, and safety function, and under the Tenth Amendment, such State authority generally is not subject to encroachment by the Federal government.

Response: DHS recognizes both the important national interest in secure identity documents and the Federalism implications of the policies which underpin this rule. Accordingly, DHS has welcomed and encouraged State participation in this process and, where possible, drafted these rules in such a way as to maximize State discretion. Where the exigencies of national security and the need to prevent identity fraud have militated in favor of a uniform national standard (e.g., baseline security features on identity cards and background check requirements), DHS has, as reflected above, consulted with States in order to ensure that the uniform standards prescribed could be attained by the States and

would reflect the accumulated security experience of State motor vehicles administrations.

Comment: Some commenters wrote that the REAL ID Act and regulations violate the Constitutional right to travel freely from one State to another by denying citizens in non-compliant States the right to board any plane, interstate bus, or Amtrak train. Other commenters wrote that government initiatives conditioning the ability to travel upon the “surrender of privacy rights” require particular scrutiny. One commenter wrote that the situation is acute for residents of Hawaii or Alaska who often have no choice but to travel via Federally-regulated modes of travel.

Response: DHS does not agree that the REAL ID Act will hinder individuals’ rights to interstate travel. The REAL ID Act states that a Federal agency may not accept State drivers’ licenses or identification cards for official purposes unless a State is meeting the requirements of the Act. At this time, the definition of “official purposes” includes boarding Federally-regulated commercial aircraft; no other form of transportation is included. Moreover, travelers will be able to use identification other than a REAL ID driver’s license to board an aircraft. While Federally-regulated commercial aircraft are a mode of transportation, the Act only prohibit Federal agencies from accepting a non-REAL ID license or card where a State-issued driver’s license is presented by the individual. Where individuals are allowed to board aircraft or enter Federal facilities with documents other than a State-issued driver’s license or identification (such as a passport or military identification card), neither the Act nor these rules change those processes and procedures. Further, an individual with a State-issued non-compliant driver’s license or identification card may travel interstate or intrastate in a

commercial motor carrier, Amtrak train, ship, individual automobile, or any other mode of transport aside from Federally-regulated commercial aircraft. These transportation options illustrate that individuals' rights to travel are not substantially impeded.

Comment: Several commenters and States expressed concern with a State's lack of authority to request or demand that other jurisdictions correct erroneous records about individuals and that there is no easily available process for resolving errors. A number of commenters wrote that the lack of a process for correcting errors in the REAL ID Act violates both procedural and substantive due process under the Fifth and Fourteenth Amendments. One commenter expressed concern with the requirements that licensing authorities maintain for ten years the name and photograph of individuals denied licenses because of suspicion of attempting to obtain a fraudulent license.

Response: DHS recognizes that the provision of redress is an important element of any credentialing program. Applicants need a process by which they can access their records, correct errors, and obtain due process if denied a card. States already provide such a redress process for driver's license applicants. Generally, State DMVs direct applicants to the appropriate Federal agency, SSA, to resolve SSN verification issues or to USCIS to resolve immigration status verification issues. SSA and USCIS have redress programs in place to assist individuals whose records are incomplete or inaccurate. State-to-State record checks are also done routinely, and when an applicant needs to access his or her out-of-State DMV record, the applicant must make the request directly to the State DMV. DHS will work with the States to inform the public of their ability to access and correct DMV records as well as records held in the various Federal data verification systems used to implement this rule.

The ten-year retention period proposed in the NPRM for the photograph and identity of individuals denied a license has been reduced in the final rule to five years. This limited retention is necessary to enable State DMVs to reduce the incidence of individuals who shop among DMVs until one issues a license.

Comment: Three commenters wrote that there is no due process in instructing DMVs to refer an applicant to the local USCIS office when there is a non-match through SAVE. There may be no local USCIS office, and a non-citizen has no straightforward route to review and correct their records and USCIS lacks jurisdiction to correct errors made by different immigration agencies. One commenter wrote that only through the FOIA process can an immigrant gain access to his or her immigration records, and that tens of thousands of FOIA requests are currently pending.

Response: DHS disagrees that there is a lack of effective due process or redress when there is a non-match through SAVE. An individual who believes that information about him or her in SAVE is inaccurate, can schedule an appointment online with USCIS at www.uscis.gov and be assigned an appointment at the appropriate USCIS office based on the individual's residential zip code. These appointments afford an opportunity to meet with an Immigration Officer face-to-face to resolve any non-asylum related issues relating to a current or pending immigration case. Minimal information, including an Alien Registration Number or Receipt Number is required to schedule an appointment.

Comment: Several commenters wrote that REAL ID has the potential for fostering discrimination, particularly against non-citizens. One commenter urged DHS to ensure REAL ID-compliant cards are all accepted equally, without "geographic discrimination." One commenter wrote that REAL ID will cause discrimination against

U.S. citizens who “look” or “sound” foreign. This commenter wrote that DMV employees must make subtle judgments about who is a citizen. Another commenter wrote that non-citizens and foreign nationals who are in the United States for work or study will be singled out and that renewing a document will be difficult because DMV employees will not understand the complexities of immigration law. One commenter urged DHS to promulgate rules prohibiting discriminatory behavior and creating penalties for DMV staff who discriminate against individuals.

Response: DHS believes that the States will take adequate measures to prevent discrimination and is unable to create private rights of action for the behavior of DMV employees. DHS disagrees that citizens will be treated differently based on their “looks” or “sounds” since all persons seeking to obtain a REAL ID-compliant driver’s license or identification card have to establish their identity, date of birth, and lawful status in the United States. Furthermore, State DMVs already work with immigration documents and questions of citizenship and immigration status under their applicable State laws and have developed increasing familiarity with this subject already, without evidence of discriminatory practices in so doing.

9. REAL ID Will Not Make the Nation Safer

Comment: Commenters wrote that terrorist intentions cannot be predicted based on identification and that REAL ID will not prevent determined bad actors from using a compliant REAL ID to gain access to Federal buildings, nuclear facilities, and aircraft. A number of commenters wrote that it is not clear whether REAL ID will enhance the nation’s security or create new opportunities for those seeking to exploit the nation’s security. Commenters also wrote that centralization of personal data would create a

greater security risk and may raise demand and value of a counterfeit document. Some commenters wrote that the proposed regulations would not have prevented the 9/11 terror attacks since all but one of the hijackers could still have obtained a State driver's license. One commenter said that REAL ID is predicated on a flawed belief that only "outsiders" intend to harm the United States, yet U.S. citizen "insiders" have committed terrorist acts.

Response: The commenters are correct that the REAL ID rules cannot completely eliminate the possibility that an individual will commit an act of terrorism inside the United States. However, by improving the security and reliability of State-issued identification documents, the rules substantially increase the ability of the government and law enforcement to identify with greater accuracy an individual at a check point or screening opportunity. Furthermore, the rules minimize the possibility of an individual possessing multiple documents, as some of the 9/11 terrorists did. The 9/11 Commission and Congress have concluded that this ability may prevent or deter future acts of terrorism.

It is incorrect to assume that the REAL ID rules could have had no impact on the 9/11 terror attack. As described in great detail in the 9/11 Commission Report, the ability of the terrorists to easily obtain multiple, legitimate identity documents facilitated their ability to move about the country and to board the ill-fated aircraft with minimal scrutiny. Under this final rule, it will be significantly more difficult for an individual to use a false name or provide fraudulent documents to obtain an identification that can be used for purposes of boarding a commercial airplane. Therefore, the final rule makes it less likely that a terrorist could circumvent watch-list screening processes and security procedures (as upgraded or developed post-9/11) and board a commercial airplane.

Further, several of the terrorists no longer had lawful status in the United States. Under the REAL ID Act and this final rule, those individuals would now be unable to obtain REAL ID drivers' licenses or would only obtain a temporary driver's license that clearly indicates on its face an expiration date tied to the expiration of the holder's status.

10. REAL ID Will Result In Persons Driving Without Licenses and Auto Insurance

Comment: Several commenters wrote that REAL ID, and the weeks it can take to collect documents needed to replace lost or stolen licenses, would result in illegal immigrants driving without a license and auto insurance, and this would present health and safety risks on the roadways.

Response: DHS does not believe that the implementation of the REAL ID requirements will result in persons, particularly illegal aliens, driving without a license and auto insurance any more than may already be occurring. Most States already require the collection and submission of particular documents in order to replace lost and stolen licenses.

11. REAL ID Will Place a Heavy Burden on State DMVs

Comment: Many States and AAMVA wrote that if States are to maintain their present levels of service while incorporating REAL ID, they will need to hire additional employees, increase service hours, expand or increase facilities to accommodate customer volume, purchase additional equipment to support personnel, create and implement public education campaigns to inform customers, and anticipate and handle increases in customer inquiries. The commenters recommended several DHS actions, including coordinating between DHS and DOT's Federal Motor Carrier Safety

Administration (FMCSA) to reassess their approach to funding REAL ID requirements; prohibiting Federal agencies from charging transaction fees for verification; coordinating among DMVs, the National Association for Public Health Statistics and Information Systems (NAPHSIS), and State vital record agencies to provide reliable data and acceptable fees; requiring States to employ electronic verification systems only as they become available; and consolidating and synchronizing system development schedules. Other commenters recommended changes to the enrollment and renewal processes, including allowing for waivers of verification requirements for certain categories of persons whose identification had already been vetted by the Federal government, allowing transfers of authorization from State to State of persons with valid REAL ID identification cards, and exempting certain segments of the population from REAL ID requirements.

Response: Based on these comments, DHS is taking several measures to reduce the impact of the rule. First, States meeting specific DHS benchmarks for progress toward REAL ID compliance will qualify for additional extensions until no later than May 10, 2011. Second, DHS is adopting an age-based approach to REAL ID implementation. The rule requires individuals born after December 1, 1964 to enroll and receive REAL ID cards prior to December 1, 2014, in order for those cards to be accepted for official purposes. Individuals aged fifty or older on December 1, 2014 will not be required to enroll until December 1, 2017. After December 1, 2017, all individuals will have to possess REAL ID cards in order for those cards to be accepted for official purposes. This timeline will substantially reduce the impact of REAL ID on DMV operations and budgets.

Comment: Many States and commenters wrote that REAL ID will significantly increase service times at DMVs, resulting in a degradation of service. AAMVA estimated that DMV workloads will increase by 132 percent and that transaction times for license renewals will double. One commenter wrote that central issuance would impose considerable burdens on citizens of rural, low-density states. Several States wrote that the inability to use the Internet would impose a significant burden on DMV operations; one State wrote that the elimination of telephone and mail-in address changes would force approximately 400,000 additional persons into its DMV offices. Commenters also wrote that State DMVs will be required to add new staffing and infrastructure and, at the same time, replace or reconfigure their existing offices. States commented that hundreds of new employees will need to be hired and new costs incurred to obtain fingerprinting and background and financial checks of DMV staff. A few States noted that they will have to renegotiate contracts for services such as card printing or purchase new printers.

Response: DHS understands the commenters' concerns and agrees that forcing the entire driver's license and identification card holder population into a compressed timeframe would likely result in increased DMV service times and a general degradation of services. The final rule permits, for example, additional time for enrollment, remote license transaction processing, and eliminates the necessity of in-person DMV visits for address changes. Further, there is no requirement for financial background checks or central issuance of licenses, although a number of States have adopted central issuance as a best practice.

Comment: Several commenters wrote that State DMV officials will require extensive training in recognizing the many types of immigration documents and statuses that applicants may present. One commenter wrote that REAL ID would change State DMVs “into a wide-ranging enforcement agent of the Federal government in areas from immigration rules to Social Security fraud.” Commenters also wrote that State DMVs will be required to add new staffing and infrastructure and, at the same time, replace or reconfigure their existing offices. A few States noted that they will have to renegotiate contracts for services such as card printing or purchase new printers.

Response: DHS disagrees that the REAL ID Act or its implementing rules would result in DMV employees acting as enforcement agents. The rules require that the DMV issue compliant licenses only to individuals lawfully present in the United States and whose Social Security Number can be verified with the Social Security Administration. DHS also believes that the rules simplify the handling of immigration-related issues, which DHS concedes is a very complicated area. DMV officials are required to verify a non-citizen’s lawful status with DHS. The SAVE system administered by USCIS permits DMVs “one stop shopping” to verify an individual’s lawful status in the United States. Furthermore, many States provide extensive document training to their personnel to assist in identification and authentication of valid documents. Furthermore, State DMVs already work with immigration documents and questions of immigration status under their applicable State laws and have developed increasing familiarity with this subject.

Comment: Commenters wrote that State DMVs will be required to undertake other activities that they do not currently perform. One State wrote that by some State

laws, drivers' licenses and State ID cards are issued by two separate government agencies. Several States said they would need to acquire new or enhanced records management systems. Other States wrote that they will have to physically rearrange their facilities to comply with the REAL ID requirement to maintain a photo of everyone who applied for a license.

Response: While there may be activities DMVs may now need to perform in order to issue more secure drivers' licenses and identification cards under REAL ID, Congress determined that these activities are necessary in order to ensure more secure and reliable forms of identification. Understanding that these new functions may cause strain on some DMV facilities, the final rule provides flexibility and additional time for states to implement these activities.

12. Those Without Access to Required Documents

Comment: Several commenters wrote that REAL ID would impose significant burdens on low-income individuals in the form of significantly higher fees for licenses and ID cards, higher additional costs to obtain necessary underlying documents, and extra time from work, potentially involving lost wages, to apply for REAL ID cards. One commenter wrote that a consequence of these burdens could be a likely increase in counterfeited ID cards and large numbers of individuals who lack Federally-compliant identification. Several commenters stated that certain groups would be unfairly affected by the requirement to produce certain documents, including foreign nationals, Native Americans, domestic violence victims, the homeless, the elderly, and military personnel. In addition, commenters described circumstances that could impede individuals' access to required documents, such as natural disasters.

Response: DHS believes that the REAL ID Act does not have a disproportionate impact on certain groups. There is no evidence that many of these groups lack the documents required to establish an individual's name, date of birth, SSN, and lawful status. Should States determine that the economically disadvantaged individuals are experiencing a hardship in obtaining the necessary documents or cannot afford the license fee established by the State, nothing in the rule precludes a State from offering the driver's license or identification card or copy of a birth certificate at a reduced cost or waiving the fee altogether. In addition, the final rule enables States to establish an exceptions process for a variety of situations and circumstances, including circumstances where a particular suite of documents are unavailable following a natural disaster.

13. REAL ID Will Be A Burden To End-Users

Comment: Two commenters wrote that the responsibility for validating REAL ID cards is a government function and should not be delegated to air carriers. Instead, DHS should provide "readers," similar to those used by Immigration and Customs Enforcement, for use at airports. Two commenters requested the rule make clear that the current option regarding individuals submitting to a more extensive physical search rather than showing ID before passing through airport security will not be affected by the REAL ID Act.

Response: Neither the NPRM nor this final rule govern what documents should be accepted or procedures followed at airports and Federal facilities when an individual is unable to present a REAL ID-compliant document as his or her form of identification. DHS does not agree with the comment that validating a REAL ID is exclusively a

government function, and believes that a wide variety of entities would want to validate a REAL ID document before accepting it as a valid form of identification.

Comment: Another commenter asked how end-users could continue routine functions if, after 2013, State-issued drivers' licenses do not meet REAL ID standards, since REAL ID would be required for access to nuclear facilities. If a State is not in compliance or elects not to participate in the REAL ID program, access by persons with licenses from those States would be prohibited, and the ability of the plants to function could be seriously impaired. A commenter mentioned that an access authorization program supervised by the Nuclear Regulatory Commission is already in place. One commenter wrote that while commercial nuclear power plants are licensed by the NRC, they are privately owned and operated and security is the responsibility of the owner/operator, not the Federal government; therefore, they should be exempted from the final rule requirements.

Response: Since the REAL ID Act specifically included access to a nuclear facility as an example of an "official purpose," DHS cannot simply exempt nuclear power plants from the scope of the rules. DHS agrees with the commenter that access authorization programs supervised by the Nuclear Regulatory Commission may provide sufficient safeguards concerning access to nuclear facilities. The NRC-supervised programs may set forth alternative procedures or acceptable forms of identification for persons seeking access to a nuclear facility; however, if an individual is presenting a driver's license or State-issued identification card, it must be REAL ID-compliant pursuant to the REAL ID Act.

Comment: One commenter expressed concern about the impact of REAL ID on commercial truck drivers, and suggested that drivers without REAL ID identification cards would be far less valuable to carriers. One commenter wrote that motor carriers domiciled in non-compliant States would be at a severe disadvantage in finding drivers, and commercial drivers themselves will have to absorb the additional costs of REAL ID, including increased fees to obtain licenses and lost income.

Response: Any additional fees that DMVs may charge to obtain a REAL ID document will not fall disproportionately on commercial drivers. Nothing in the rules precludes companies employing commercial drivers from subsidizing the costs incurred by the drivers they employ. Furthermore, a REAL ID driver's license is not the sole document a commercial driver could use to access a Federal facility. Since a Federal facility may accept other forms of identification or establish alternative procedures to admit individuals with non-compliant licenses to Federal facilities, DHS does not believe that commercial driver's license holders will be disadvantaged by living in a State that chooses not to comply with the REAL ID requirements.

B. Scope, Applicability, and Definitions

Comment: Two State commenters and the AAMVA requested clarification of the terms verification, authentication, and validation. Two commenters asked for a clear definition of the term "Federal facility." One commenter wrote that it is a statutory requirement to consult with the U.S. Department of Transportation in developing new definitions for driver licensing terms. Commenters also requested clarification regarding what age individuals will be required to obtain a REAL ID. It was suggested that the age requirement should be consistent with the age airlines require passengers to have their

own identification documents. One commenter expressed the need to inform the public, in detail, how individuals will be impacted by not obtaining a REAL ID.

Response: DHS agrees that the term “verification” should be clarified. The final rule defines “verify” to include two processes: ensuring that the source document is genuine and has not been altered and that the identity data contained on the document are valid.

DHS does not believe that the term Federal facility needs further definition and cannot predict how individuals without a REAL ID-compliant driver’s license or identification card (either through their own choice or because a State does not issue compliant documents) will be impacted. DHS notes that individuals without a REAL ID-compliant document will still be able to enter Federal facilities and board commercial aircraft, and these rules cannot determine what alternative documents are acceptable for those purposes. DHS believes that each State can determine the appropriate minimum age to issue a REAL ID-compliant driver’s license or identification card to its residents and does not believe that a single Federal standard is necessary in this area.

1. Definition of “Official Purpose”

Comment: Two States wrote that since many Federal areas require identification, all “official purposes” must be clearly stated in the rule so that States can make informed decisions on whether to be REAL ID-compliant based upon the impact on the State budget versus the negative convenience impact on its citizens. Numerous commenters wrote that the definition of “official purpose” captures the requirements of the REAL ID Act and they are opposed to expanding the definition. Commenters stated that, should DHS decide on expanding the definition of “official purpose,” it should not

be done without an open comment period. One commenter wrote that DHS has arbitrarily chosen to restrict the required presentment of REAL ID-compliant documents to a much smaller set of official uses than was contemplated by Congress, and this contradicts and undermines DHS's statutory mandate to enforce Federal immigration law. One State suggested that DHS create a list of applicable Federal facilities. One commenter voiced concern over possible expansion of the definition to include Federally licensed firearms dealers and that residents of non--compliant States could be blocked from purchasing firearms. One commenter encouraged DHS to consider all the ways in which REAL ID could be used and not limit it to boarding of Federally-regulated commercial aircrafts, entering of Federal facilities, and nuclear power plants.

Response: DHS agrees with those commenters who noted that the proposed definition of “official purpose” is consistent with Congressional intent. DHS is neither expanding nor limiting the definition further in this rule. DHS will continue to consider additional ways in which a REAL ID license can or should be used and will implement any changes to the definition of “official purpose” or determinations regarding additional uses for REAL ID consistent with applicable laws and regulatory requirements. DHS does not agree that it must seek the approval of Congress as a prerequisite to changing the definition in the future (except of course to remove one of the three statutorily-mandated official purposes) as § 201(3) of the Act gives discretion to the Secretary of Homeland Security to determine other purposes.

DHS does not intend that a REAL ID document become a de facto national ID based on the actions of others outside of DHS to limit their acceptance of an identity document to a REAL ID-compliant driver’s license or identification card.

Comment: Commenters proposed other acceptable documents, including over-the-counter interim identification cards and tribal identification documents that should be accepted for official purposes. Another State noted that Canadian citizens drive to the United States and fly out of local airports and that it would benefit them economically to accept Canadian passports as identification cards for Federal purposes. AAMVA wrote that for States choosing not to comply with REAL ID, an alternate form of identification is essential to ensure that commercial carriers and drivers who deliver to Federal facilities continue to have unimpeded access to these facilities and that interstate commerce is not impeded. One commenter wrote that tribal ID issues must be incorporated into the regulation at the outset. One commenter wrote that DHS's disallowing of Transportation Worker Identification Credential (TWIC) as an alternative to a REAL ID document because of "slow progress" in implementing the TWIC program will be invalid if DHS extends REAL ID implementation. The commenter suggests permitting use of TWIC because like REAL ID, TWIC also is a Federally-vetted identification card.

Response: As noted in other responses, the REAL ID rule does not control what other, if any, alternative documents can be accepted by Federal agencies where an individual seeks to present an identification document other than a State-issued driver's license or identification card (which, under the Act and this final rule, must be REAL ID-compliant).

2. Other Definitions

Comment: One State asked for several amendments to the rule definitions. Specifically, the State asked that "ability to affect" be clarified to mean "direct ability to affect"; that digital photograph should read as "a digitally printed color reproduction of

the face of the holder of the license or ID card”; that a definition be added for foreign passports; clarification that providing a foreign passport with a valid visa is an acceptable document for validating a REAL ID; clarification that “principal residence” is not a residency requirement, but merely defines principal address; and clarification that Secretary means “Secretary of the U.S. Department of Homeland Security.” AAMVA suggested that the term “reissued” be amended to include “only when material changes are required such as name changes.”

Response: DHS agrees that the term “principal residence” needs additional clarification and has defined the term in the rule to mean the location where a person is currently domiciled (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State of domicile, if such requirements exist. DHS agrees with the comment regarding material changes and the rule now states that a State may conduct a remote reissuance if State procedures permit as long as there has been no material change in the applicant’s information since prior issuance. DHS believes that the definitions of “ability to affect” and “foreign passport” do not need further clarification. DHS decided against the proposed definition of “digital photograph” since certain high-security features work best with a black and white photograph and DHS does not want to preclude States from using such technology to secure their licenses.

C. Compliance Period

Comment: Many commenters, including at least twenty States and AAMVA, wrote that the compliance period is too short and is impossible to meet. Specific reasons cited for why the compliance period is too short included the following: the compliance deadline fails to take into account the States’ cycles for valid drivers’ licenses and

identifications; systems that DMVs must use to verify documents under REAL ID either do not exist or are not operational; the compliance deadline compels States to take on the unfunded expenses of hiring and training more staff and making significant infrastructure changes, waiting times for customers at DMVs will increase, the compliance deadline reflects a failure to understand how State legislatures work and how complex the process is for issuing State drivers' licenses and identification cards, and compliance deadline leaves insufficient time for States to appropriate funds for the cost of implementing REAL ID. Commenters also wrote that States have no incentive for requesting such extensions, and several State legislatures have declined to even attempt compliance with the Act or the rule.

Response: DHS agrees with the commenters that States would be unable to fulfill the entire range of REAL ID regulatory requirements by May 11, 2008.

Therefore, DHS is taking several measures to reduce the impact of the rule. First, States meeting specific DHS benchmarks for progress toward REAL ID compliance will be granted additional extensions until no later than May 10, 2011. Second, DHS is adopting an age-based approach to REAL ID enrollment and will only require individuals born after December 1, 1964 to enroll by December 1, 2014, in order to receive cards acceptable for official purposes on December 1, 2014. Thus, individuals aged fifty or older on December 1, 2014, will not be required to be enrolled until December 1, 2017. These measures will substantially reduce the impact of REAL ID enrollment on DMV operations and budgets.

DHS has chosen this approach as the most effective and expeditious way to achieve the purposes of the Act. DHS believes that this approach balances the strong

national security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the necessary legal and budgetary approval from within their State to comply with the regulations.

Comment: Many commenters and States did not agree on the proposed compliance period and suggested additional ideas, from basing the compliance period on the natural license expiration date to extending compliance through 2018. Two commenters wrote that a six-month planning deadline after possible publication of a final rule is unrealistic, and once there are operational systems available to all jurisdictions for implementing REAL ID, States should have at least one year to connect to those systems before issuing compliant cards. Other commenters suggested delaying the full implementation date by some other term of years commensurate with State driver's license renewal periods. Another commenter wrote that State legislatures need two years after issuance of a final rule to enact enabling legislation. One State suggested a four-year compliance delay, as the State has a lack of funding; other States proposed a delay of five years following final rule publication because those States will not complete legislation and budget actions before that time. One commenter wrote that the compliance date would result in every State requesting a waiver and compressing the enrollment process from five years to something less. AAMVA suggested a ten-year compliance period, to 2018, and also recommended that DHS avoid setting the implementation period until there are systems for verification accessible in all jurisdictions.

Response: As noted above, DHS agrees that the compliance date should be extended and therefore has extended the enrollment deadline to December 1, 2014, for drivers after December 1, 1964 (that is, under age fifty), and to December 1, 2017 for all other drivers as described above.

Comment: Commenters wrote that DHS should permit States to grandfather into REAL ID compliance those individuals who have held a driver's license for ten years. Another commenter wrote that DHS should give States the flexibility to delay re-verifying certain populations so that States maximize their resources and avoid severe service disruptions. Where a State can verify customer data before issuing a license or identification document, DHS should permit States to use "alternative renewal processes" during the REAL ID enrollment period. Another commenter wrote that a State should be able to waive verification requirements for members of the military, Federal employees, and passport holders who already have been through a Federal vetting process. Another commenter proposed grandfathering in any State that can demonstrate that its process for issuing drivers' licenses or identification documents is similar to REAL ID.

Response: The REAL ID Act does not authorize Federal agencies to accept non-compliant cards from specific age groups or other populations through a grandfather clause. DHS, as discussed above, recognizes the operational burden on States if they were required to reenroll all licensed driver's by the initial proposed enrollment date of May 2013. DHS has determined, based on comments received requesting deferments or exemptions for populations based on age and a statistical analysis of TSA incident report data, that an age-based enrollment would provide States with the most reasonable implementation options.

DHS has determined that, based on TSA incident report data it has reviewed, that a logical dividing point for age-based enrollment would be fifty years of age. As a result, the rule requires the States to focus first on individuals born after December 1, 1964, when issuing REAL ID cards. These individuals will be under fifty years of age on December 1, 2014. DHS has determined that deferring the REAL ID enrollment requirements until December 1, 2017, for those individuals born on or before December 1, 1964, will relieve the States of some operational burden associated with re-licensing their license holders. This provision will enable States to extend the enrollment of this lower-risk population until December 1, 2017.

This approach is based on a review of several data sets that correlated age and the propensity to commit a terrorist act and age and the likelihood to commit a criminal act.

Depending on the specific data set examined, different age cutoffs starting at the age of thirty-five would be appropriate for the REAL ID final rule. Of the several data sets that were examined, the best data set is one from TSA, because it is the only one that shows a correlation between activities occurring within TSA's purviews, an incident resulting in a arrest, the age of the individual and the use of a fraudulent identification.

For this final rule, data was collected and analyzed on the total number of TSA incidents involving the use of fraudulent identification representing the time period from October 1, 2004 through July 25, 2007. The data was then sorted and those potential incidents involving the use of a fraudulent identification (using the key words fraud, false, fake, and ID) were extracted. Each incident report was read and those incidents that were not germane to the REAL ID rulemaking were purged. Finally, DHS, using both the raw data as well as the calculated rates (based on the number of individuals

flying), grouped the incidents into different age groups. The results were a data set that correlated one of the primary requirements of this rulemaking (the need to present an appropriate identification prior to boarding an airplane) to the use of a fraudulent identification by the age of an individual.

A total of 98 incidents of where an individual was arrested that involved the use of a fraudulent identification was included in this group. The age of the individuals arrested was available for 86 of the arrests. The weighted mean age of an individual arrested was 32 years of age with a standard deviation of 8.95 years. This means that about two-thirds of those individuals who were involved in an incident where an arrest occurred were between the ages of 23 and 41. About ninety-five percent were between the ages of 14 and 50.

Using this data, DHS estimated the percentage of individuals who would be prevented from using a fraudulent identification (as a result of the REAL ID rule) for the age cutoffs 41, 45.5, and 50. Based upon a normal distribution, 66.7% of all individuals using a fraudulent identification would be between the ages of 23 and 41 (1 standard deviation) and 95% of all individuals would be between the ages of 41 and 50. These statistics were then used to estimate the risks associated with the age cutoffs of 41, 45.5, and 50. An age cutoff of 41 would allow DHS to potentially prevent the likelihood of 83% of all individuals from using a fraudulent identification. But as a means of providing additional national security, the final REAL ID rule would not have prevented 17% of the individuals from using a fraudulent identification.

With a cutoff of age 50, DHS would potentially prevent the likelihood of 97% of all individuals from using fraudulent identification. But as a means of providing

additional national security, the final REAL ID rule would not have prevented 3% of the individuals from using a fraudulent identification. Since the age cutoff 45.5 is the midpoint of the ages 50 and 41, DHS estimated the likelihood that REAL ID would prevent the use of a fraudulent identification, by using the averages for the age cutoffs 50 and 41 and found that an age cutoff of 45.5 would prevent the likelihood of 90% of all individuals from using a fraudulent identification. But as a means of providing additional national security, the final REAL ID rule would not have potentially prevented 10% of the individuals from using a fraudulent identification (See Table Below).

Table 1: Risks Associated with Different Age Cutoffs

Risks Associated with Different Age Cutoffs		
Age Cutoff	Potential Percentage Number of Incidents Prevented (%)	Potential Percentage Number of Incidents not Prevented (%)
41	83	17
45.5	90	10
50	97	3

The TSA data was analyzed even further by stratifying the universe of these 86 arrests into three categories. The categories are 1) arrests where a fraudulent identification was discovered, but the fraudulent identification was not the reason that the individual became a suspect; 2) arrests where the individual was a TSA Selectee and during the process, a fraudulent identification was discovered; and 3) arrests where the

individual became a suspect because of his/her use of that identification and the use of a fraudulent identification was the cause for the arrest. Because DHS was not able to determine a priori the characteristics of the population as a whole as to who uses a fake identification and who does not (in order to determine an appropriate age cutoff), the best that can be done is to examine the ages of those who were arrested when the use of a fraudulent identification was the cause of the arrest and compare that population to those who were arrested where a fraudulent identification was discovered at the time of the arrest but the fraudulent identification was not the reason to suspect the individual. The results show that the means of each population are not statistically different from each other. In other words, we cannot say that the samples are from different populations and we accept the null hypothesis.

Comment: One commenter wrote that the waiver process by which a State may request an extension of the compliance deadline to December 31, 2009 is acceptable, as it gives States the time they need to plan, budget, and implement the regulations. Another commenter wrote that compliance related to the verification of lawful status of aliens could be implemented by all 56 states and territories by the May 11, 2008 deadline, and that there is no rational basis to extend the specific deadline for SAVE compliance. One commenter wrote that DHS should institute a formal safe harbor so that a State may be deemed compliant if it is making reasonable progress toward implementing REAL ID. One commenter wrote that when there is a legitimate reason to grant an extension for one State, it should apply to all states. Another commenter wrote that a State's request for an extension should be deemed justified in the absence of extraordinary circumstances. One commenter wrote that DHS has demonstrated flexibility by allowing States to delay

implementation and creating a petition process for States needing more time, and the commenter encouraged DHS to continue collaborating so that States have the necessary flexibility to comply with the law.

Response: Although the above comments indicated that certain aspects of the proposed rule do not require an extended compliance period, all the commenters observed that States would be unable to meet the overall compliance deadline proposed in the NPRM. As noted earlier in this preamble, in addition to the extension proposed in the NPRM through December 31, 2009, DHS is allowing a second extension request valid until no later than May 10, 2011 .

Also as noted earlier in this preamble, DHS has chosen this approach as the most effective and expeditious way to achieve the purposes of the Act. DHS believes that this approach balances the strong national security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the necessary legal and budgetary approval from within their State to comply with the regulations. Furthermore, because some States are uniquely situated and have taken different steps to come potentially closer to compliance with the REAL ID Act than other States, DHS does not believe that “one size fits all” when it comes to the use of the Secretary’s extension authority.

D. Privacy Considerations

Comment: DHS received numerous comments regarding the need to protect the privacy of REAL ID cardholders. The comments raised a wide range of concerns including the creation of a national ID; establishment of a Federal database on all ID

holders; the uses of the ID; the need to set specific standards to protect privacy, including addressing data storage, access rules, safeguarding the data, and retention period for the data; the need to provide a redress process; limiting Federal access to the data; who should operate or govern the query system; and best practices for privacy protection of the data. AAMVA also commented that the States are committed to protecting privacy and that they are prepared to address privacy in their security plans and many already have such plans in place.

At least one State and several other commenters, including NASCIO, expressed concerns about the development, governance, and protection of privacy in Federal reference databases. NASCIO recommended collective State governance. Many commenters wrote that State information security requires extreme caution, given that exposing personal information in untested databases would result in great harm if a security breach occurred.

Response: DHS recognizes that protecting the privacy of REAL ID cardholders is a prerequisite to obtaining the public's trust in the REAL ID card. DHS has addressed those concerns in the final rule to the full extent of its authority by mandating protections for the personally identifiable information DMVs collect, store, and use pursuant to the REAL ID Act and its implementing regulations.

1. Privacy Concerns Regarding a National ID and a Federal Database

With regard to concerns that REAL ID will create a national ID, DHS does not intend that REAL ID documents become a de facto national ID and does not support creation of a national ID. The REAL ID Act, however, does not provide authority for DHS to issue restrictions on who may or may not use REAL ID cards. DHS can only

define those “official purposes” for which a REAL ID credential must be used in lieu of other State-issued drivers’ licenses. The final rule has limited “official purposes” to those set forth in the Act – accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants. In addition, the final rule does not require that the REAL ID driver’s license or identification card number or design be unique nationally, thus possibly limiting the functionality of the REAL ID card or identification number as a national ID card. It is unclear at this early stage whether REAL ID cards in fact will be used differently from current State drivers’ licenses and identification cards; but if cardholders experience specific abuses regarding third-party misuse of these cards, Congress and the States can determine whether and how to address such abuses.

With regard to concerns that REAL ID will create a Federal database on all REAL ID card holders, DHS does not intend to own or operate a database on all driver’s license and identification card holders. REAL ID implementation, however, will require a messaging system (generally known as a “hub”) to serve as the backbone to support the verification checks REAL ID requires. In addition, the State-to-State data exchange will likely require a software application (likely an index or pointer system) to enable the States to exchange limited information to identify whether an applicant for a card holds a card in another jurisdiction.

DHS is mindful that the States expect to continue to have control over their systems, their information, and the processes that govern any use or access. DHS agrees that issues relating to the governance of any State-to-State exchange of information are critically important, and that the States will need to play an important role in determining

the governance structure of any system(s) that may interface with State licensing systems and the Federal verification systems required to implement REAL ID. Many of the individual State comments emphasized that they are committed to protecting privacy and that they are prepared to address privacy in their security plans and already have such plans in place. The governance of the system(s) necessary to conduct the data checks will be established in consultation with DOT and the States during the first phase of the REAL ID implementation. The Privacy Impact Assessment issued in conjunction with the final rule discusses the governance issue in more detail.

As described above, DHS is currently working with AAMVA, DOT, the Social Security Administration, the Department of State, National Association of Public Health Statistics and Information Systems (NAPHSIS), and State representatives to define requirements for a messaging system to support the multiple data verification checks REAL ID requires. The backbone of the messaging system could be AAMVAnet, the network system AAMVA already operates to facilitate data verification for the State DMVs. It is important to note for purposes of privacy and security that the AAMVAnet backbone resides on a private network with no connectivity to the Internet, making it much less vulnerable to attacks. It has been, and will continue to be, a highly secure transportation layer for all communications between the States and agency databases. DHS will work with DOT and AAMVA to build upon the security, privacy, and governance principles that have guided AAMVA and the States for decades in conducting licensing checks by reinforcing the security and privacy features of the AAMVA communications and systems architecture.

In addition to potentially using AAMVAnet as the backbone, DHS, DOT, and the States are exploring the alternative of using the Commercial Drivers Licensing Information System (CDLIS) as the platform for supporting the State-to-State data exchange requirements of the REAL ID Act and regulation. CDLIS already supports queries to every State DMV every time an individual applies for a driver's license in any State or the District of Columbia. Although privacy groups urged DHS not to build upon CDLIS since it is a centralized database, it is more technically and economically difficult to design a State-to-State data exchange system that avoids using a central repository (an index or pointer system) to direct the checks to the appropriate State. DHS understands that State systems would not be able to handle the volume of messages received if all jurisdictions were sending and receiving messages from all jurisdictions at the same time. The central repository would facilitate the check by identifying which jurisdiction(s) has a match and obtaining the relevant record information. The repository would only be used to facilitate the State-to-State data exchange or for authorized law enforcement personnel who are checking a specific license or identification card against the system. Moreover, CDLIS is a secure, State-governed system that stores only the minimum amount of personal information necessary to minimize false positives and to facilitate the routing of queries and responses between States.

With regard to limiting access, (Federal, State, and private-sector) to the State DMV data stored in the data verification system, DHS, DOT, and the States will define the access rules. The REAL ID Act does not create Federal access rights to State DMV databases. Moreover, DHS supports limiting access to the data verification system to authorized State DMV personnel and to Federal government agencies engaged in official

responsibilities pertaining to law enforcement, the verification of personal identity, or highway and motor vehicle safety. For example, DHS personnel do not currently access CDLIS or AAMVAnet. Its law enforcement agents obtain access to State driver's license information using National Law Enforcement Telecommunications System (NLETS) and commercial data sources.

2. Protection of State DMV Databases

To help protect the privacy and security of the personally identifiable information (PII) held in State DMV databases, § 37.41 of the final rule requires States to prepare a security plan for all State DMV facilities and systems involved in the issuance, enrollment, production, or manufacture of drivers' licenses and identification cards, and to submit the plan to DHS as part of the State's application for certification. The final rule requirement for the security plan to include reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained in DMV records and information systems is consistent with key information safeguards outlined in the Privacy Act of 1974 (5 U.S.C. §552a) and the Federal Information Security Management Act of 2002 (44 U.S.C. 36).

The security plan requires a number of important privacy and security safeguards including, but not limited to: (1) procedures to prevent unauthorized access, use, or dissemination of applicant information and images of source documents retained pursuant to the Act; (2) standards and procedures for document retention and destruction; (3) a privacy policy; (4) a prohibition on release and use of personal information that, at a minimum, is consistent with the Driver's Privacy Protection Act, 18 U.S.C. § 2721 et

seq.; (5) access controls, including employee access badges, background checks and systems controls; (6) emergency incident response plans; (7) internal audit controls; (8) physical security of facilities where drivers' licenses and identification cards are produced; (9) security of the document materials and papers from which drivers' licenses and identification cards are produced (§§ 37.41 and 37.43).

The requirement that the security plan include a privacy policy regarding the personally identifiable information collected and maintained by the DMV provides a key privacy protection. Although the final rule does not define the specific content of the privacy policy, DHS expects that the policy will reflect the fair information principles noted in the NPRM, which call for openness, individual participation (access, correction, and redress), purpose specification, data minimization, use and disclosure limitation, data quality and integrity, security safeguards, and accountability and auditing. These principles are widely recognized and embodied in numerous Federal, State, and international law and codes of practice. In addition to reflecting these principles, DHS recognizes that the privacy policies will need to be consistent with State privacy laws governing DMVs information practices, and the final rule in no way reduces the protections States already afford PII held by DMVs.

With regard to concerns regarding disclosure of PII from DMV databases, the final rule requires that the security plan include a prohibition on release and use of personal information that, at a minimum, is consistent with the DPPA. Although the DPPA provides for a large number of permissible uses, it is the only Federal law that currently applies to State DMV records and will provide a floor that States can build upon to further limit the disclosure of DMV record information.

3. Privacy Concerns Regarding the Machine Readable Technology Employed by REAL ID

Section.IV.I.8 of the comments discussion discusses the comments and responses regarding the machine readable zone (MRZ) on REAL ID cards. In brief, commenters were split between the privacy groups that were concerned about third party “skimming” of information from the MRZ if it is not encrypted, and the State and law enforcement groups that opposed encryption because it could interfere with speedy law enforcement access to the information and it would be difficult and costly to manage encryption keys across so many jurisdictions.

Given law enforcement’s need for easy access to the information, and the complexities and costs of implementing an encryption infrastructure, DHS is not requiring encryption of the MRZ at this time. If, in the future, the States collectively determine that it is feasible to introduce encryption, DHS may consider such an effort so long as the encryption program enables law enforcement easy access to the information in the MRZ. Moreover, in the future, DHS, in consultation with the States and DOT, and may consider technology alternatives to the PDF417 2D bar code that provide greater privacy protections after providing for public comment.

As discussed in the Privacy Considerations section of the NPRM (72 FR at 10824-25), DHS strongly encourages the States to address concerns about the ability of non-law enforcement third parties to collect or skim personal information stored on the REAL ID drivers’ licenses or identification cards. Some States, such as California, Nebraska, New Hampshire, and Texas have passed laws that prohibit the collection of information on a driver’s license or identification card. In addition, AAMVA has drafted

a Model Act² that, if enacted by a State, would prohibit commercial users, except as provided by the State's legislation, from using a scanning device to: (1) obtain personal information printed or encoded on the card and; (2) buy, sell or otherwise obtain and transfer or disclose to any third party or download, use or maintain any data or database, knowing it to contain personal information obtained from a driver's license or identification card. The Model Act authorizes verification of age for purchasing alcoholic beverages or tobacco products, but with strict limitations on the storage and use of such information.

In addition to concerns about third-party skimming, privacy groups commented that access to the MRZ should be restricted to law enforcement, while other commenters also supported access without information collection for bars and liquor stores to help prevent underage drinking. In response to commenters urging that the rule limit Federal agency access to the MRZ, DHS is not aware of any current plans by Federal agencies to collect and maintain any of the information stored in the MRZ. If a Federal agency should want to use the MRZ to collect and maintain personally identifiable information in the future, any such information collected from the MRZ would be subject to the protections of the Privacy Act of 1974 (5 U.S.C. 552a), and other Federal laws and policies regulating the use and handling of personally identifiable information, including requiring appropriate time for public notice.

A number of commenters also urged DHS to limit the data elements in the MRZ to the minimum necessary, particularly if the MRZ is not encrypted. DHS has reviewed the elements identified in the NPRM and eliminated the requirement to include the name

² "Model Act to Prohibit the Capture and Storage of Personal Information Obtained from a Driver's License or ID Card," AAMVA 26-8.2-03, 2003.

history in the MRZ. All other data elements are necessary for DMV and law enforcement purposes.

4. Additional Privacy Concerns

The privacy groups and individuals also filed comments on a number of other privacy issues such as redress, the confidentiality of the address for certain at-risk individuals, and the Western Hemisphere Travel Initiative (WHTI)-compliant card and its use of Radio Frequency Identification (RFID) technology. The comments and responses to these additional privacy concerns are discussed in other sections of this final rule.

Comment: Two States wrote that the proposed rule did not provide adequate safeguards for data storage, thereby significantly increasing the risk of identity theft. One commenter wrote that even the most rigorous security measures could be foiled by personnel with legitimate access intentionally or inadvertently exposing information. Several commenters wrote that the rule's broad expansion of data collection and storage creates a significant threat to privacy and that guidance on access to data and accountability should be issued. Commenters also wrote that stored data should be secured to protect the identities of victims from abusers in State government who have database access.

Response: Section 37.41 of the final rule helps address concerns about adequate protections for the DMV databases and information systems. It calls for States to prepare a security plan, including providing reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information stored and maintained in DMV records and information systems. The rule specifically points out the need to include access control measures to prevent

unauthorized access to the information. States are already sensitive to the importance of protecting their data and systems. Section 37.33(b) will help ensure that DMVs provide comprehensive, layered security protection to reduce the incidence of unauthorized access and use. In addition, this final rule does not preempt States from implementing privacy protections that are even more protective.

Comment: One State wrote that DHS should set standards for accessing the required information from the Federal government and other States so that the verification process is performed similarly by all States. Multiple commenters stated that they want data systems to be one-way and used solely for the purpose of verification; Federal system owners would not be able to query State databases. Similarly, other commenters wrote that the rule should limit how States can access Federal databases for purposes of verifying source documents and should only allow authorized DMV employees access to Federal databases. One commenter requested that the final rule make clear that no State may electronically access source documents contained in DMV databases in other States. Several States opposed Federal government access to the extensive data collected by States and suggested a network interface that only allowed State queries of the databases. One commenter wrote that it is unclear from the proposed rule how the federated query service will operate and manage the data between databases and DMVs, and while strict access controls to REAL ID data and documents will help minimize security and privacy risks, such controls will not be possible without DHS answering these questions prior to implementing REAL ID.

Response: DHS is working with DOT, AAMVA, and the States to enhance existing querying systems to meet the requirements of the REAL ID Act and rule. This

“federated querying system” builds upon existing systems that include verification of DMV applicant birth certificates and social security numbers. These existing systems enable States to query the SSOLV database managed by SSA and the EVVE database managed by NAPHSIS. In both cases, only State DMVs can initiate queries. Moreover, SAVE, the USCIS system for verifying the lawful status of individuals in the United States, is designed on a similar basis, with only States able to initiate queries. Enhancements to existing systems to verify information held by the Department of State will be designed and built on the same principles.

In addition, State-to-State data exchanges required by REAL ID may consider leveraging the Commercial Drivers Licensing Information System (CDLIS) as the baseline platform for systems design, development and deployment. CDLIS is a secure, State-governed system that stores the minimum amount of personal information possible to facilitate the routing of queries and responses between States. Enhancements to CDLIS to support the requirements of REAL ID will not change the fundamental architectural, security, and privacy principles upon which CDLIS has been built and operated by the States for nearly two decades.

As noted above, § 37.41 of the final rule addresses these concerns. It calls for States to prepare a security plan, including providing reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information stored and maintained in DMV records and information systems. The rule specifically points out the need to include access control measures to prevent unauthorized access to the information.

Comment: One State recommended that paper document retention should not be required once electronic formats were secured. Another commenter wrote that REAL ID should collect only the data that is absolutely necessary and keep it for only as long as necessary, and requirements should be in place to periodically review and purge information.

Response: Section 202(d)(2) of the Act mandates that States “retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.” DHS does not have discretion to change that requirement. Accordingly, under this final rule, States may choose to keep paper copies, microfiche, or digital images of source documents. Depending on the method of document retention adopted by the State, the State must maintain paper copies for a minimum of seven years, or microfiche or digital images of source documents for a minimum of 10 years pursuant to the Act. We note that the NPRM proposed to allow retention of microfiche for 7 years; however, as discussed above the statute mandates retention of “images” of source documents for 10 years. A microfiche is a film image, rather than a paper copy, of a document; therefore, we have corrected the error in the proposed rule to more accurately reflect the statutory mandate.

Comment: Many commenters wrote that obtaining a REAL ID could become a requirement for participation in American life, and that a REAL ID could be used for purposes beyond what is contemplated today, such as controlling gun ownership or smoking. Another commenter wrote that implementing REAL ID would undoubtedly result in a system that political and agency heads would not restrain themselves from using and expanding in the future, and that REAL ID would become a practical necessity

for anyone wishing to travel on an airplane, open a bank account, collect Social Security benefits, or take advantage of other government benefit programs. Other commenters wrote that the result would be a dividing of the citizenry into those who have REAL identification cards and those who do not, with the latter group subject to suspicion. One commenter urged DHS to make clear in the final regulations that driver's license numbers and ID card numbers must be unique within a State and that the REAL ID cards should not have a nationally standard format.

Response: DHS agrees with the comment that a driver's license or identification card number needs to be unique only within a State and need not be a unique nationally identifying number. DHS also understands the concerns raised in the comments about how a REAL ID might be used outside of the defined "official purposes" identified in the Act and this final rule. DHS does not intend that a REAL ID document become a de facto national identification card. Whether States choose to require presentation of a REAL ID for State purposes is not within the purview of DHS's authority under the Act – which applies to documents that Federal agencies can accept for official purposes – and thus is outside of the scope of this rulemaking.

E. State to State Database Queries

Comment: Several commenters suggested the following requirements for State databases: using a single agreed-upon naming record keeping, clarifying "transferable" functionalities, implementation of point-to-point interfaces for data verification, a decentralized query system, and a system to check for duplicate registrations in multiple States. One commenter suggested that every State have a data governance committee. Several States offered best practice suggestions to support State database security,

including encryption, annual employee confidentiality agreements, secured data centers, testing programs to determine tampering, security audits, and multi-factor authentication.

Response: DHS agrees that issues relating to the governance of any State-to-State exchange of information is critically important, and that the States will need to play an important role in determining the governance structure of any system(s) that may interface with State licensing systems and the Federal verification systems. DHS is mindful that the States expect to continue to have control over their systems, their information, and the processes that govern any use or access.

During the initial period of REAL ID implementation, States will conduct data verification using their current methods of connection to SSOLV, SAVE, and the other State DMVs. States will continue to use AAMVAnet to connect to these data sources. AAMVAnet is governed by the Board of AAMVA and is subject to the security and privacy requirements established by the association of DMVs. As DHS, DOT, AAMVA, and the States complete the upgrade of existing systems to meet the requirements of REAL ID, these systems will be deployed and operated on the same basis as the current network of AAMVAnet-based systems for DMV verification of applicant data and State-to-State exchanges of driver information. The architecture of these systems will determine the scope and extent of the privacy concerns they pose.

F. Document Standards for Issuing REAL ID Drivers' Licenses and Identification Cards

1. Identity

Comment: One State agency asked whether the term “source document” in the proposed rule is synonymous with “identity document” used in the Act. One State wrote

that it was concerned about individuals having to surrender their REAL ID card from one State when moving to a new State and applying for a new card. Many commenters wrote that certain applicants would have difficulties obtaining proper source documents, including refugees, lower-income individuals, persons who live in rural areas, the elderly, minorities, and abuse victims. Another State suggested that the rule should only specify criteria and procedures rather than a list of specific documents.

Response: DHS disagrees with the comment that the rule should specify criteria rather than a list of specific documents acceptable to establish a person's identity.

Limiting the number of documents means that only the documents which DHS has found to be the most secure may be used to demonstrate identity. Second, identifying specific documents improves the chances that DMV employees will be able to distinguish valid from fraudulent documents because there will be fewer categories of documents with which they will need to be familiar. Third, a smaller list of documents increases the ease of verifying the documents independently, a related statutory requirement and one that will be very effective in reducing document and identity fraud.

DHS does not agree that certain categories of individuals cannot reasonably obtain the identity documents specified in the rule, but the rule provides a reasonable level of discretionary flexibility to address these types of cases.

Comment: Commenters wrote that the list should be expanded to include a variety of documents, including adoption papers, refugee status paperwork, expired foreign passports if USCIS documentation is current, passports with expired visas, derivative visas, Immigration Court documents, foreign birth records, foreign national identification cards, the I-94 (Arrival-Departure Record), and the I-797 (Notice of

Action). Refugees and asylees are more likely to have these documents before they receive an Employment Authorization Document (EAD). Two States suggested that documents that can be electronically verified through SAVE should be acceptable. Commenters wrote also that foreign applicants may have documents that are not on the list but may have been issued by DHS or the courts to prove immigration status.

Response: The document list provided in the proposed regulation and adopted under this final rule is only for demonstrating identity, not lawful status in the United States. DHS agrees with the commenters who suggest that any document verifiable by SAVE is acceptable for proving lawful status, and that is what this final regulation provides. These can include Forms I-797 and I-94 as they provide sufficient information for a State DMV to check SAVE, which will be the method by which aliens lawfully present in the United States establish lawful status. But because many of these documents (including the ones listed above) cannot, and are not intended to, prove a person's identity, an additional document must be provided for that purpose. In the case of refugees and asylees, they will be able to obtain a Form I-766, Employment Authorization Document.

DHS cannot accept the comment that foreign documents be included on the list of acceptable documents to prove identity. First, section 202(c)(3)(B) of the Act specifically prohibits any States from accepting any foreign document other than a passport. Second, the Act requires that documents presented for proof of identity be verified by the issuing agency. State DMVs cannot be expected to verify with foreign governments the validity of documents. DHS has, instead, decided to use the U.S. visa

within the foreign passport as the identity document that a nonimmigrant alien can present.

Comment: One commenter wrote that a delayed birth certificate should be considered an acceptable document. One State wrote that many births in rural areas are not recorded, and States should be able to use other documents. One commenter wrote that a requirement for a certified copy of a birth certification would place a hardship on poor persons. One commenter supported the concept of re-verification of birth certificates for renewals of REAL identification cards, except that the rule should allow the option for the applicant to use documents with the current legal name instead of the name at birth.

Response: While confirming identities with delayed birth certificates can be problematic, this final rule does not preclude a State from accepting a validly-issued delayed birth certificate. DHS agrees that some, mostly elderly, individuals may not have a birth certificate at all. As a result, the final rule permits a State to use its exceptions process to determine what alternative documents an individual may present in this limited circumstance to establish his or her date of birth. DHS does not agree that lower-income individuals will have a hardship obtaining certified copies of their birth certificates and believes that States may be able to assist those individuals for whom the cost of obtaining a birth certificate is prohibitive. Further, DHS believes that there is value in re-verifying applicant information upon renewal of drivers' licenses and identification cards and has amended the renewal sections to require re-verification of SSN prior to issuance.

Comment: Commenters requested a variety of additional documents be considered as acceptable source documents, including Federally-issued identification

documents such as military identification cards, the Common Access Card, retired military ID cards, dependent military ID cards, Veteran Affairs Universal Access Photo ID cards, and Transportation Workers Identification Credentials (TWIC). Some commenters also requested that Native American Tribal Documents be deemed acceptable source documents. One State asked whether a tribal photo identification card accompanied with a Canadian birth certificate (which is currently acceptable to the commenting State) will be acceptable to DHS. If not, these populations may encounter particular difficulty obtaining a REAL ID.

Response: DHS does not agree with comments suggesting addition of Native American Tribal Documents, TWIC cards, or Common Access Cards (CAC) or military identification issued by the U.S. Department of Defense as identity documents for REAL ID purposes at this time. DHS continues to understand from the Department of the Interior and Bureau of Indian Affairs that Tribal members are similarly situated to the general population, and have access to the identification documents set forth in the rule. Where a Tribal member does not have the necessary document to establish identity, date of birth, or lawful status, a State's exception process can take this into account based on the State's knowledge and experience with Tribal documents in its area of jurisdiction.

In regard to the use of a TWIC as proof of identity, at this time, DHS does not believe that it would be feasible for States to accept TWIC cards as initial proof of identity by persons applying for a REAL ID card. First, section 202(c)(3) of the REAL ID Act requires States to verify all documents presented by applicants as proof of identity. The capability for States to verify a TWIC card currently does not exist at this time.

Second, although a TWIC holder must have been determined to be lawfully present in the United States to obtain the TWIC, the TWIC does not necessarily expire when the holder's lawful status expires. Therefore, a DMV could not use the TWIC card alone as evidence of lawful status and the applicant would have to present both a TWIC (for identity) and a separate document (for status).

Accordingly, there is little benefit to the individual or the DMV at this time to include a TWIC as an acceptable identity document. As such, the final rule does not include TWIC as an acceptable form of identification. However, DHS will revisit this issue in the future should such a capability become available and will consider the ability for States to verify TWICs with the federal government as the standards for the "hub" are developed.

2. Social Security Documentation

Comment: Several commenters, including States, wrote that obtaining a Social Security card can be a lengthy process. They argued that some individuals may have lost their original card, a Social Security number (SSN) does not enhance the identification process, and ineligibility for a SSN is difficult to determine and verify. One commenter wrote that individuals might not have a SSN because of religious beliefs. One State wrote that States should have the option of requiring a Social Security card.

Response: The REAL ID Act requires that individuals provide proof of their social security account number or verification that they are not eligible for a social security account number. While the typical proof submitted to DMVs is a Social Security card, the rule allows for the submission of alternate documents, such as a W-2 form, SSA-1099 form, or pay stub to establish the SSN. Use and verification of the SSN

is widely seen by almost every State as an effective tool in enhancing the identification process. DHS has further amended the rule to clarify for the DMVs when an individual will have not have a SSN, which is largely tied to immigration status and identity documents used to apply for a driver's license. Other instances may be addressed in exceptions processing.

3. Principal Residence Documentation

Comment: Many commenters suggested that the definition of “principal residence” be amended. One State recommended that DHS define “principal residence” as the jurisdiction in which an individual spends the most time. Another commenter requested “principal residence” be defined as the primary or most important place of abode of an individual and at which he or she presently has an intention of living for an indeterminate period. Another State suggested that the definition be changed to require that a person's principal residence be within the jurisdiction issuing the card and to allow the States to issue exemptions. One State suggested that DHS clarify the definition so that students, military, visitors, and others who are temporarily residing in another jurisdiction are not required to change their principal residences.

Response: DHS agrees that the definition of “principal residence” needs to be clarified in the rule. The term is defined in the final rule as the location where a person is currently domiciled (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State of domicile, if such requirements exist.

Comment: Commenters wrote that requiring two documents proving residence is burdensome on certain individuals (i.e., recent movers, minors, homeless, and those not listed as primary payer on accounts) and suggested use of the United States Postal

Service (USPS) National Change of Address system as a verification tool. One State recommended that the rule allow use of an on-line address verification system to replace the two forms of address documents, at least for remote renewals.

Response: DHS does not agree that it is too burdensome to require an individual to produce two documents to establish his or her address of principal residence. Since the State has maximum flexibility in determining what documents are acceptable for this purpose, DHS believes that the States will be able to find a combination of documents for each person eligible to apply for a REAL ID driver's license or identification card. DHS believes States may use the procedures established in their exceptions processes when seeking to document the address of principal residence of the homeless or other individuals who may not have a fixed street address.

Comment: Commenters wrote that there are certain groups of people including students, long-haul truck drivers, the homeless, migrant workers, and others who do not have a single fixed address and who will not be able to meet this requirement. One commenter requested that the rule be strengthened by clarifying in the exceptions process that the requirement of a fixed address will be waived as long as a REAL ID applicant can make a showing that they have none and that they can comply with other documentation requirements.

Response: As noted above, DHS believes that States will be able to resolve these issues through the use of their exceptions process.

Comment: Several commenters noted the difficulty in providing a street address because many rural addresses use rural route numbers only, and recommended new regulatory text: "An acceptable street address includes rural delivery route and/or box

number or other address convention used by the USPS in all areas of the US where a number and street name has not been assigned for US mail delivery.” One commenter wrote that in its jurisdiction, it is common to find streets with same names throughout different communities and that rural addresses are identified by kilometers and hectometers within a street address or neighborhood. Another commenter (a State) has islands that do not have home addresses; mail is delivered to post offices where the residents must go to retrieve their mail. One State noted that many Native American populations do not have physical addresses.

Response: DHS agrees with these comments and has amended the rule to define “address” as an address convention used by the USPS in areas of the United States. and Territories where a number and street name has not been assigned for U.S. mail delivery.

Comment: One commenter wrote that address changes make up the largest number of driver record changes and many States do not require issuance of a replacement card until the next renewal cycle. Several commenters, including States, wrote that when an address change occurs, no REAL ID card need be required and that it is cost prohibitive for States to issue new documents for address changes.

Response: DHS agrees with these comments and is no longer requiring an in-person transaction for an individual to change his or her address. DHS also leaves it to State law and procedure when and under what circumstances a State requires issuance of a replacement driver’s license or identification card.

4. Lawful Status Documentation

Comment: Several commenters wrote that there are many examples of lawfully present immigrants who may not have the listed documents and that the list should be

expanded. One commenter wrote that these omissions violate the Constitution by denying to individuals in these classes the rights and privileges accorded to others, and stated immigration documents do not always reflect actual status. A State wrote that Temporary Protected Status aliens should be required to provide documentation from DHS of an established identity. Some commenters objected to the need for an unexpired U.S. visa on a foreign passport. They pointed out that renewing a visa would involve foreign travel, and in any case a visa does not authorize a stay in the U.S. for any particular period of time. An alien with nonimmigrant status may lawfully extend or change his or her nonimmigrant status without maintaining a valid visa stamp. One State noted that in some cases a passport might expire before the visa.

Response: DHS has included the list of documents as verifying identity of the person presenting them, not lawful status. Lawful status may be determined through verification against DHS's SAVE system. Aliens who are granted Temporary Protected Status are already eligible for EADs, Form I-766, and thus have a document proving identity. DHS does not believe that this rule treats citizens and aliens differently—each is required to prove identity and lawful status to obtain a REAL ID driver's license. Further, DHS does not believe that treating citizens and aliens differently is in violation of the Constitution, but an inherent right of a sovereign nation and one that reflects American constitutional law. Regarding the visa in a foreign passport, DHS is not treating the visa itself as a document establishing lawful status. Again, the check of DHS's SAVE system will accomplish that purpose. The visa is used to verify identity and can be verified with the issuing agency — the U.S. State Department. DHS cannot verify, with the issuing agency as required by statute, foreign passports because there is

no guarantee that issuing a foreign government would respond to a DMV request for a specific passport. Finally, like all documents that verify identity, the document itself must be unexpired to assure that a significant amount of time has not passed such that the person's appearance has changed. This is a fundamental rule with issuance of all types of documents that are designed to prove a person's identity.

5. Verification of Documentation Presented

Comment: One commenter wrote that DHS should partner with AAMVA in implementing document verification requirements. Several commenters wrote that States need ongoing training and guidance for verification and to be advised what to do if documents cannot be verified. A few commenters noted that the verification of documents is only a verification that paper contains legitimate data and not that the applicant is the owner of the paper or that the document is authentic. A State asked who makes the determination of whether a State's verification procedure is "effective." Several commenters wrote that Federal electronic verification systems do not exist yet or need significant enhancements; therefore, compliance requirements should be delayed. One commenter wrote that States must find their own ways to verify documents but that States lack the legal authority to force compliance. Commenters suggested States use third party databases or automated document authentication systems and share images to deter identity fraud. One State asked whether it would have to re-verify source documents if the applicant already had a REAL ID from another State.

Response: DHS is working with AAMVA and State representatives to design and implement verification systems to support the requirements of the REAL ID Act and this rule. Representatives of numerous States and the Federal agencies responsible for

verification of identity information for REAL ID and related Federal government programs are continuing to meet to develop recommendations on prioritization of data and document verification systems based on risk and value. Two verification systems are currently available for use by all States – the SSOLV system for verification of social security numbers with the SSA and the SAVE system managed by USCIS for verifying that an applicant is lawfully present in the United States and for how long. These systems have been in widespread use for many years and are highly effective. DHS is working to improve further the usability and accuracy of these systems and to meet REAL ID-specific requirements. DHS is also working with the appropriate Federal and nongovernmental agencies to verify other documents and applicant data mandated by this rule. As these systems are deployed and become widely available for use by States, DHS plans to publish notices of availability and timetables for required use in the Federal Register.

DHS recognizes that verification consists of two separate elements: (1) determining that the source document is genuine and has not been altered; and (2) determining that the identity data contained on the document is valid. Electronic verification systems can support these elements. However, DHS recognizes that other methods can be employed by States to confirm one or more elements of identity assurance. Electronic verification systems are only one component of a suite of measures to assure States that the applicants are who they say they are and that they are lawfully present in the United States.

DHS recognizes that there are many different techniques for verifying the identity and qualification of applicants and will evaluate the effectiveness of such techniques.

Comment: AAMVA and several States wrote that a system of passport verifications through the Department of State is not available and it will be difficult for States to determine name matches. One commenter wrote that States must find their own ways to verify documents but that States lack the legal authority to force compliance. Commenters suggested that States use third party databases or automated document authentication systems and share images to deter identity fraud. One State asked whether it would have to re-verify source documents if the applicant already had a REAL ID from another State.

Response: DHS is working with the Department of State and AAMVA to provide a capability to verify passports, U.S. visas, and other information held by the Department of State. When this capability is widely available for State use, DHS will publish a Notice of Availability in the Federal Register and establish timelines for State use of this capability. DHS is also working with Federal, State, and nongovernmental organizations to identify and improve name formats and matching algorithms used by identity verification systems.

Comment: Commenters wrote that they supported the use of a SAVE system to verify lawful status because State DMV staff should not have to be immigration officials, but that many improvements needed to be made to the system. Commenters wrote that SAVE needs to indicate the type of pending nonimmigrant status the applicant has, as well as work authorization information. Another commenter wrote that for students and exchange visitors, information is provided in the Student and Exchange Visitor Information System (SEVIS) system, but SAVE and SEVIS are not yet linked. Several

States wrote that they should not have to pay transactional costs for Federally-mandated verification through a Federal system.

Response: The SAVE system has proven to be a highly effective means of verifying immigration status information for many DMVs and other Federal and State agency users for twenty years. DHS is working with AAMVA and USCIS to improve the usability, accuracy, and reliability of the SAVE system even further, to include access to SEVIS and other data through SAVE.

DHS is committed to expediting and subsidizing the improvement, design, development, deployment, and operation of verifications systems to support the requirements of the REAL ID Act and this rule; however, the States have typically borne the costs of verifying the identity and qualifications of applicants for drivers' licenses and identification cards.

Comment: Several commenters supported the use of the EVVE system, but pointed out that it is not ready for implementation, and that an exception process would be needed. States opposed having to bear the costs for verification.

Response: DHS recognizes that the EVVE system is not ready for full implementation. The final rule provides for additional time for States to implement EVVE or another system that provides for the verification of birth records. Verification of identity information is a valuable tool that many DMVs utilize. Birth data is currently collected and maintained by the States, and DHS is not seeking to Federalize these records.

Comment: A few commenters supported the continued use of the SSOLV system, even though manual intervention is sometimes needed and the system is

sometimes not available. One State wrote that it opposed having to re-verify SSNs that were previously verified through SSOLV.

Response: DHS agrees that the SSOLV system is the best existing system to verify an individual's SSN. DHS does not believe that the short amount of time it takes a State to enter an SSN and verify it through SSOLV is an unreasonable burden to impose, even for those persons whose SSN was previously verified through SSOLV. Forty-eight States and the District of Columbia currently have the capability to verify SSNs through SSOLV or other means. This requires electronic verification of SSNs with SSA but allows States to use other means than SSOLV. Verification of SSNs through SSOLV costs pennies and is typically completed in a few seconds. DHS, AAMVA, and the States are working with SSA to improve the accuracy and reliability of the SSOLV system.

Comment: Several States and commenters expressed concern that States are required to verify an individual's address of principal residence, yet DHS concedes in the rule that no such method exists. AAMVA wrote that in order for the States to support the verification process, DHS must clarify what the "system of document verification acceptable to DHS" really means. One State wrote that DHS should develop national standards for address requirements and verification; AAMVA wrote that this verification should be left to the States to determine and provide to DHS in their certification plans. Several States wrote that development or implementation of an electronic verification system for proof of principal residence is not feasible.

Response: DHS agrees that States are best situated to verify an individual's address of principal residence. The rule gives States maximum flexibility in determining an individual's address of principal residence.

Comment: Many commenters wrote that DHS should delay implementation of this final rule until all system components needed for verification are in place and tested. AAMVA and several States expressed concern about the cost for verification processes, particularly programming costs for States to adapt State systems for the new requirements and to establish connections with verification systems. States wrote that an all-driver verification system is needed for implementing the REAL ID program. Commenters suggested expanded use of the Commercial Driver License Information System to satisfy the one-driver, one-record goal. Some commenters objected to the concept of a national database. Some commenters wrote that electronic verification systems must be fast and reliable; provide real-time, accurate information; and be integrated into the REAL ID issuance process. One commenter favored a decentralized query system where one DMV uses an applicant's basic identifying information to send requests to other jurisdictions. A few States asked how a compliant State would interface with a noncompliant State in verifying an out-of-State card. Other commenters wrote that the requirement to check with other States to see whether a REAL ID had been issued should apply to all drivers' licenses, not just REAL ID identification cards.

Response: Two of the critical systems for verifying Social Security Numbers and lawful status are fully operational and currently used by many or most States. As stated above, DHS is working with other Federal agencies, nongovernmental agencies like AAMVA and NAPHSIS, and the States to design and deploy additional systems as

quickly as possible. These systems will be integrated with the licensing issuance process in each State. States cannot and will not be required to use systems that are not fully operational and available for use.

DHS is also working with the Department of Transportation, AAMVA, and the States to enhance the functionality of CDLIS to meet the requirements of the REAL ID Act and this regulation. Neither the Act nor this regulation requires the design or deployment of a new national database or any new system of exchanging of information between States beyond that already implemented through CDLIS and the National Driver Register. All States currently participate in the exchange of driver information mandated under these processes. The REAL ID final regulation simply requires States issuing REAL ID drivers' licenses or identification cards to verify that an individual does not possess a valid driver's license or identification card in another State. This requirement is similar to the existing statutory and regulatory requirements for commercial drivers' licenses. When this functionality is available, DHS will publish a Notice in the Federal Register detailing the procedures and timeline for State-to-State exchange of data required under the Act.

G. Exceptions Processing for Extraordinary Circumstances

Comment: Three States and three other commenters said that DHS should set minimum standards for the exceptions process so that there is consistency across the States. However, other States noted that the process should not be too rigidly defined, because the very nature of an exception will by necessity deviate from the current process, and that there are too many variables that need to be analyzed on a case-by-case basis to develop a rigid exceptions process.

Response: DHS disagrees with the comments that DHS should establish a uniform exceptions process for each State. DHS recognizes that each jurisdiction may face its own unique and particular set of facts and circumstances to resolve and that DHS is unable to address all such circumstances. DHS believes that States must have the flexibility to craft an exceptions process adequate to the needs of their States and recognizes that no two State exceptions processes may be identical.

Comment: AAMVA and multiple States opposed the requirement that States submit quarterly reports to DHS analyzing their exceptions processes. Four of these commenters suggested that the information could be included in a State's annual certification report instead. Further, AAMVA and many States opposed the provision requiring State exceptions processes to be approved by DHS and said this requirement would reach too far into the day-to-day operations of State agencies.

Response: DHS agrees that the proposed rule's requirement for a quarterly report on the use of the exceptions process is too burdensome a requirement for the States. The final rule strikes the quarterly reporting and requires States to submit a report as part of the recertification package a State will submit to DHS in connection with REAL ID. As necessary and appropriate, a State can designate this report as Sensitive Security Information (SSI).

Comment: One commenter said that DHS should allow States to employ exceptions processing on any list of documents that they deem circumstantially appropriate. Numerous commenters opposed prohibiting use of the exceptions process to demonstrate lawful status. In general, these commenters believed that many legal immigrants and other groups of people would not be able to meet the rule's requirements

for proving lawful status. One commenter said that the scope of the exceptions process described in the proposed regulatory text does not correspond to the scope of the exceptions process described in the rule's preamble. The commenter urged DHS to revise the proposed regulation to explicitly include all data elements required under the REAL ID Act within the scope of the exceptions process.

Response: DHS agrees in part with the comments submitted. Under this rule, the exceptions process can now also be used by a U.S. citizen to establish his or her lawful status in the United States. This will accommodate the needs of elderly or rural residents, for example, who have not obtained a birth certificate but were born in the United States. The exceptions process may not be used by non-citizens to establish lawful status in the United States. That status must be verified in all instances with DHS.

Comment: Several commenters requested that State records not include a "full explanation" regarding why alternative documentation was accepted. These commenters expressed concern that victims of domestic violence would be forced to disclose their history of abuse and that information about their location and any name changes would be widely accessible in State databases of driver records. They recommended that a generic statement be added to records of victims of domestic abuse that would indicate that alternative documents were accepted "for reasons of public safety." Three commenters said that it would not be feasible for States to mark exceptions in their data files until they complete computer system upgrades.

Response: DHS agrees that States may use statements like "for reasons of public safety" or similar generic expressions when using the exceptions process for victims of domestic violence or others, where the State feels it is necessary to preserve the

confidentiality of the reason the exceptions process was used.

Comment: Some commenters suggested that the exceptions process be broadened to include specific populations of individuals who may have problems producing the required documents, who may not spend the majority of time at home (out-of-State students, active military personnel), or who may not be able to come to the DMV in person (individuals with disabilities). Other commenters, including AAMVA, suggested that the exceptions be related to risk and could factor in year of birth or duration of continuous relationship with the State of licensure. Similarly, one State suggested that the rule grandfather all current holders of drivers' licenses or identification cards that were previously verified as lawfully-present through SSOLV and/or SAVE.

Response: As noted above, DHS does not believe it would be beneficial to establish a uniform exceptions process for all States. DHS recognizes that each jurisdiction may face its own unique and particular set of facts and circumstances to resolve and that DHS is unable to address all such circumstances. DHS believes that States must have the flexibility to craft an exceptions process adequate to the needs of their State and recognizes that no two State exceptions processes may be identical.

DHS does not agree with the comment that individuals can be "grandfathered" for REAL ID purposes. The fact that an individual once had lawful status in the United States when checked through SAVE is not indicative of his or her present status. As noted elsewhere above, DHS does not believe it is burdensome to require an SSOLV check for all persons seeking a REAL ID driver's license or identification card.

H. Temporary or Limited-Term Drivers' Licenses and Identification Cards

[§ 37.21]

Comment: Two commenters said that use of the term could cause confusion with other license types and requested that another label such as "limited-term" be substituted to avoid confusion. One commenter suggested that temporary cards indicate on the face whether the holder is a citizen or non-citizen because any immigration status can be lost or revoked or expire at any time during life of the card.

Response: DHS agrees with these commenters. DHS has added the phrase "limited-term" to avoid any confusion with existing State licensing schemes involving temporary drivers' licenses or identification cards. The section of the rule is now entitled "Temporary or Limited-Term Drivers' Licenses and Identification Cards."

Comment: Two States said that matching the expiration date of a temporary driver's license or ID card to the end date of an applicant's authorized stay would require major internal system and business process changes and may also require a legislative change in some States.

Response: DHS notes that matching the expiration date of a temporary or limited-term driver's license to the end date of an applicant's authorized stay in the United States is a requirement of the statute that DHS lacks the authority to change.

Comment: Several commenters opposed the provision limiting the duration of temporary licenses or ID cards to the duration of admission or to one year if the applicant's authorized stay does not have a fixed expiration date. Numerous commenters cited concern with how the period of authorized stay is determined, in the event, for example, that a person has a visa that expires in two years but the I-94 expires in two months. One country urged DHS to accept the term of validity of the visa, which are generally valid for relatively long periods, as the "period of time of applicant's authorized

stay.”

Response: These comments cannot be accepted. Section 202(c)(2)(C)(ii) of the Act requires that the duration of the driver’s license to be limited to the period of the person’s authorized stay or in the case of no specific period, a duration of one year. DHS does not have the authority to amend or change this direct statutory requirement. The period of admission will be determined not by documents themselves, but with the use of the SAVE system which can best identify a person’s lawful period of admission. Finally, a visa cannot be considered to be a person’s period of authorized stay as a visa only allows a person to apply for admission to the United States. It does not represent, in any sense, permission to stay within the United States for any particular period of time.

Comment: Commenters said that this provision would be unduly burdensome for many individuals who have lawful status for extended periods of time, such as F and J visa holders, and specifically expressed concern that the rule is eliminating a long-standing provision for J-1 participants, who, under State Department regulations, are entitled to a thirty-day grace period after completion of their programs to travel within the United States. One of these commenters suggested that States be allowed to use the end dates listed on the certificates of eligibility for each of these visa types as the "ending date" of status for the purpose of obtaining a driver's license.

Response: Again, the determination for lawful status in the United States will be made by the SAVE system, not particular documents. SAVE takes into account the grace periods to which those in certain F and J statuses are generally entitled. It should be noted, however, that since F and J non-immigrants are admitted for “duration of status,”

which is an indeterminate period, they would normally be issued licenses valid for one year.

Comment: Two States said that annual, in-person enrollment for these individuals would provide little added homeland security value while overcrowding DMV offices.

Response: DHS agrees in part with these comments. The final rule provides that individuals holding REAL ID cards that are not temporary or limited-term may renew remotely where there has been no material change in the individual's information (i.e., name or lawful status) and the State re-verifies the individual's lawful status and SSN where applicable. Because lawful status can change over time, DHS believes that it is necessary for a State to determine that these individuals remain in lawful status prior to extending the validity period of any REAL ID-compliant driver's license or identification card.

Comment: Three commenters asked DHS to clarify whether temporary drivers' licenses and ID cards need to have the security features of REAL ID-compliant documents.

Response: Temporary or limited-term drivers' licenses and identification cards qualify as REAL ID-compliant documents so they must contain the same security features as any full-term REAL ID driver's license or identification card.

Comment: One commenter asserted that temporary driver's license or identification cards should not be permitted because international and foreign licenses are valid for individuals who are in the United States for less than one year.

Response: The REAL ID Act permits States to issue temporary or limited-term

drivers' licenses and identification cards. States will continue to determine how long an individual must be present or have residence in a State before the State requires that person to obtain a drivers' licenses or identification card. Nothing in these rules precludes States from permitting an individual to use an international or foreign license to operate a motor vehicle in a State.

Comment: Commenters had specific comments about how this annual renewal provision would affect particular groups. Several domestic abuse advocacy organizations said that the annual requirement would give more power to abusers who have confiscated or destroyed the identification documents of their victims. One commenter said that DHS needs to amend the rule because the confidentiality requirements under the Violence Against Women Act (VAWA) preclude entry of certain immigrant victims into the SAVE system. The group suggested that if yearly renewal is required of immigrant victims, it should use the fax-back system developed by the INS to verify eligibility for Federal public benefits. A State expressed concern with DHS having defined "sexual assault," "stalking," "[d]omestic violence," and "dating violence" in establishing exceptions for the REAL ID requirement to display an individual's principal residence address on the license or identification card. The State argues that the proposed regulation would require that any State wishing to comply with the regulations must adopt the Federal definition of these crimes. This commenter argues that DHS can avoid this Federalism implication by allowing States to continue to decide who should be protected under address confidentiality programs.

Response: DHS agrees, in part, with these comments. The final rule clarifies any misperception in the NPRM that a State would have to adopt the VAWA definition

of certain terms, and makes it clear that States can continue to enroll and safeguard victims based on their own laws. DHS disagrees with the comments that the renewal requirement conflicts with any provisions of VAWA. If an individual's identity documents have been destroyed by an abuser, a State can address this situation through its exceptions process.

Comment: AAMVA, two other commenters, and four States expressed concern with the proposed requirement that a temporary document clearly state on its face that it is temporary. The commenters said that modifying cards to comply with the proposed rule would be costly and suggested that the rule instead allow States to use a restriction code on the front with clarifying language on the back. One State requested that DHS provide the exact wording that must be displayed on the face of a temporary card. One privacy group said that identifying the card as temporary on its face would amount to a "scarlet letter" for immigrants and would lead to discriminatory interactions with police and other individuals. One State commented that it does not support the "facial branding" of cards.

Response: DHS does not agree with these comments and has clarified the rule to state that a temporary or limited-term license must indicate on the license and in the machine-readable zone that it is temporary. States may use different methods to indicate the temporary nature of the license, such as using restriction codes on the front of the card and explanatory text on the back of the card.

Comment: AAMVA and one State said that they support in-person renewals for temporary REAL ID drivers' licenses or identification cards because lawful status can change and the population of individuals with temporary lawful status is far smaller and

easier to manage with in-person renewals than the larger population of U.S. citizens. In contrast, one State requested that DHS allow applicants to mail in copies of the appropriate documents proving lawful status as long as the State verifies the information via the SAVE system. One commenter suggested that foreign students be allowed to renew online if they are required to do so annually. One State questioned how many one-year terms of extension would be permitted if length of stay is not specified on a submitted Federal immigration document. Two States wrote that after an applicant obtains a REAL ID card, the applicant should not have to re-supply source documents for renewals or conversions. Several States suggested that the rule state that notice of change of address may be made on-line or by mail as long as electronic verification can be accomplished.

Response: DHS agrees with the AAMVA comment that individuals holding a temporary or limited-term license must renew in person in order to present evidence of continued lawful status. DHS believes that this is necessary because lawful status can change, and this policy is consistent with the language of the REAL ID Act. As such, the requirement remains unchanged from the NPRM.

Changes of address may be made on-line, by mail, or as otherwise permitted by the DMV. There are no limits on how many years a State can issue a one-year license or identification card to an individual who is present for an undetermined “duration of status” as long as that individual remains in that lawful status or another.

Comment: Numerous States expressed concern that the current processing time involved in USCIS review of applications for various immigration statuses impacted by REAL ID will result in a large number of applicants who wish to renew their licenses but

their applications to extend their status has not been acted on by USCIS within the year. Two States suggested that States issue interim documents that would be valid for very short periods until an applicant receives his or her permanent document demonstrating lawful status. Another commenter suggested that such an interim card be based on the applicant's visa until authorization is received and verified through SAVE, which should be programmed to contact the querying State when there is an updated applicant status. One commenter recommended that the rule allow States to use a license expiration date 90 days beyond the expiration date of the immigration document to allow for USCIS processing of applications to extend lawful status. Commenters said that individuals in certain statuses will not be able to comply with the requirement to present documentation showing extended lawful status upon renewal because in most cases, their statuses will not have been extended but merely continued.

Response: Again, State DMVs will use the SAVE system, and not particular documentation, to determine that the license applicant is in lawful status. An application that is properly filed with USCIS entitles the person to remain in lawful status beyond the period listed on the person's Form I-94 or other immigration document, that information is reflected in the SAVE system. Thus, aliens in these situations would be able to obtain REAL ID-compliant licenses and States would not have to add any additional processes with USCIS.

I. Minimum Driver's License or Identification Card Data Element Requirements

1. Full legal name

Comment: Many commenters raised issues about the concept of full legal name. One commenter stated that the provision infringes on powers reserved to the States in that

it dictates to the States acceptable methods for name changes, and that it effectively nullifies the common law name change process that some States permit. Proposed § 37.11(c)(2) would have required the applicant to present documents showing a legal name change, but several commenters pointed out that these documents may come from local or foreign government sources in addition to Federal and State governments. Two States opposed the proposed requirement to present these documents, and an individual opposed having name change information on the REAL ID. One State suggested that the rule also should provide instructions for individuals whose gender has been legally changed.

Response: DHS agrees that where State law or regulation permits an individual to establish a name other than that contained on the identity document he or she presents for a REAL ID driver's license or identification card, the State shall maintain copies of the documentation presented pursuant to § 37.31 and maintain a record of both the recorded name and the name on the source documents in a manner to be determined by the State. The use of initials or nicknames shall not be permitted, except to the extent that an initial is necessary to truncate a name longer than 39 characters in length, in which case the name should be truncated pursuant to ICAO-9303 standards. DHS also agrees that local or foreign government-issued documents can be used to establish a name history. The final rule reflects these changes.

Comment: Numerous States and AAMVA stated that there is no standard naming convention for Federal agencies and as a result passports, immigration documents, and social security cards list disparate names, making identifying the full legal name difficult. Many States commented that the Federal government needs to adopt a single standard for